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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 249

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ILLINOIS BELL TELEPHONE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Seventh Circuit entered on May 21, 1951 (R. A. 51),* denying enforcement of an order issued by the Board against the Illinois Bell Telephone Company (B. A. 15-18).

OPINIONS BELOW

The opinion of the Court of Appeals (R. A. 44-50) is reported at 189 F. 2d 124. The findings of fact, conclusions of law, and order of the National

* For purposes of this petition, the printed record before this Court consists of two separately paginated volumes: the appendix to respondent's brief in the court below, herein designated "R.A.," and the appendix to the Board's brief in

Labor Relations Board (B. A. 6-18), are reported at 88 NLRB 1171.

JURISDICTION

The judgment of the Court of Appeals was entered on May 21, 1951 (R. A. 51). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

1. Whether Section 7 of the Act, which provides that employees "shall have the right * * * to assist labor organizations * * * and to engage in concerted activities, for the purpose of * * * mutual aid or protection," protects employees against discrimination for refusing as individuals to cross a picket line.

2. Whether, assuming such protection exists, it is lost where the motive of the employees in refusing to cross a picket line is not to seek benefit from the employer for themselves but solely to aid the pickets.

3. Whether such protection is lost where the employees are represented by a collective bargaining agent which is not participating in the strike and has not authorized or directed, but has also not forbidden, them to refrain from crossing the picket line.[1]

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the court below, designated "B.A." The proceedings in the court below are bound at, and paginated continuously from, the end of the appendix to respondent's brief.

[1] If this petition is granted, we propose to argue the further question whether the court below erred in concluding (R. A. 50) that the Board's order was too broad.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., 151, *et seq.*), are set forth in the Appendix, *infra,* pp. 22-23.[2]

STATEMENT

Upon the usual proceedings under Section 10 of the Act, the Board, on March 16, 1950, issued its findings of fact, conclusions of law, and order (B. A. 6-16). The facts, which are not in dispute, may be summarized as follows:

Respondent's enterprise is organized and operated in two geographical divisions—one covering substantially the City of Chicago, Illinois, the other the remainder of the State (B. A. 24; 92-93).[3] During the period involved in this case, respondent's employees in the Chicago area were represented for the purpose of collective bargaining by the Chicago Telephone Traffic Union (CTTU); the collective bargaining representative for the Illinois area was the Illinois Telephone Traffic Union (ITTU) (B. A. 25; 60, 93).

On April 7, 1947, ITTU began an economic strike against respondent and established picket lines at

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[2] It is undisputed that, since the events involved in this case occurred before the effective date of the amendments enacted by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. III, 141, *et seq.*), the provisions of the original Act apply. However, the amendments effect no presently material changes in these provisions.

[3] Where a semicolon appears in a series of record references in this statement, references preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

respondent's installations in the Chicago area as well as in the rest of the State (B. A. 25; 56-58). CTTU, taking no part in the strike, met with respondent during the period of the strike (which lasted through May 8, 1947) and later, on May 15, 1947, signed a new contract covering the employees in the Chicago area (B. A. 25; 93, 178).[4]

While their bargaining representative, CTTU, did not participate in the strike, eight telephone "supervisors"[5] employed in the Chicago area refused to cross the ITTU picket lines and accordingly failed to report for work (B. A. 25-26; 62, 67, 74-75, 78, 81-82, 84, 88). Seven of these employees were members of ITTU, the striking union; the eighth later joined ITTU (B. A. 26; 65, 67, 71, 74, 78, 81, 84, 88).[6]

In letters sent on April 11 and 12, 1947, respondent informed these employees that they were being demoted from supervisors to operators for thus absenting themselves from work and that their continued failure to report after receiving these letters would result in their suspension (B. A. 26;

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[4] An agreement between respondent and CTTU dated July 25, 1946 had been scheduled to terminate on March 29, 1947. On March 25 and April 25, 1947, the parties agreed to extensions to April 28 and June 2, 1947, respectively (B. A. 25; 173, 174, 176).

[5] Because the alleged unfair labor practices occurred before the 1947 amendments, the Board found it unnecessary to determine whether the eight employees were "supervisors" within Section 2 (3) of the amended Act (B. A. 8, n. 7). The court below likewise found this question immaterial (R. A. 44, n. 1).

[6] Only three of the eight were members of CTTU, the collective bargaining representative of the division in which they were employed.

88-89, 94, 133-138). The eight employees continued, nevertheless, to refuse to cross the picket lines and stayed away from their jobs until the pickets had left the buildings in which they worked (B. A. 26; 59).

After the strike had ended and the picket lines had been removed, the employees reported for work and were assigned the positions and duties of telephone operators to which their demotions had been announced in respondent's letters of April 11 and 12, 1947 (B. A. 26-27; 57, 64, 69, 72, 75-76, 80, 84-85).[7] Their salaries as operators were in each case lower than the salaries they had received as supervisors (B. A. 27; 64-65, 69-70, 73, 76, 80, 85-86, 90).

Noting the undisputed facts that the ITTU strike had been legal and that the picketing had been conducted peacefully (B. A. 9, n. 8, 27, 29), the Board found that, by demoting the eight employees because of their refusal to cross the picket lines, respondent had violated Section 8 (1) and 8 (3) of the Act (B. A. 8). The Board rejected respondent's contention that, in refusing to cross the picket line, the employees had derogated from the authority of their non-striking bargaining agent (CTTU) and were therefore not entitled to the protection of the Act. Their representation by a union, the Board held, did not preclude them from

[7] All except one of the eight were back at work by May 9, 1947, the day following the termination of the ITTU strike. The remaining employee, who had become ill during the strike, returned to work early in September following her recovery and convalescence (B. A. 26-27).

asserting, "by any form of concerted activity not in itself illegal, protected interests outside of and unconnected with the bargaining process or its results" (B. A. 11-12).[8]

The Board's order (B. A. 15-16) requires respondent to cease and desist (1) from discouraging membership in Illinois Traffic Division 14, CWA (successor to ITTU), or any other labor organization of its employees by discriminating in their employment, and (2) from interfering with, restraining, or coercing its employees, in any like or related manner, in the exercise of their rights guaranteed by Section 7 of the Act. Affirmatively, the order requires respondent to offer the eight employees reinstatement to their former positions as telephone supervisors, to make them whole for any loss in wages, pension rights, or sick benefits they may have suffered as a result of the discrimination against them, and to post appropriate notices.

On the Board's petition for enforcement of its order, the court below decided that the "crucial issue * * * is whether the eight employees were protected by § 7 of the Act" (R. A. 46-47). Holding that they were not, the court denied enforcement. First, the court held, since the employees had decided individually and not in a group to refrain from crossing the picket line, their activities were

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[8] The Board also rejected respondent's argument that the extensions of the agreement between CTTU and respondent (see note 4, *supra*), amounted to a no-strike pledge by the union and that the refusals to cross the picket line must therefore be viewed as an illegal strike (B. A. 9-11).

not of the "concerted" type guaranteed in Section 7 (R. A. 47-48). Second, assuming *arguendo,* and contrary to its stated view, that the activities were "concerted" the court held that they could not be deemed for "mutual aid or protection" since the employees refusing to cross the picket lines neither sought nor were entitled to seek benefits from the respondent for themselves. Finally, reasoning that it was the exclusive concern of their bargaining agent to demand benefits from the employer on their behalf, the court concluded that the refusal of the eight employees to cross the picket lines derogated from the bargaining agent's authority and was therefore unprotected by Section 7 (R. A. 48-50).

REASONS FOR GRANTING THE WRIT

Overlooking the Act's express guarantee to employees of the right to "assist" labor organizations and severely truncating the right of employees to engage in other "concerted activities" for "other mutual aid or protection" (Section 7), the decision below subjects to employer reprisal employees who, in traditional manner, lend their assistance to a striking labor organization by refusing to cross its picket line. Since employees who honor picket lines normally do not act formally as a group (*National Labor Relations Board* v. *International Rice Milling Co.,* 341 U. S. 665), and do not seek an immediate benefit for themselves, the conclusion of the court below that these factors remove the activity from the Act's pro-

tection affects almost every employee who refuses to cross a picket line. This holding sharply curtails not only the rights of employees but the power of labor organizations, preserved by Congress in the amended Act, "to bring pressure to bear on offending employers in primary labor disputes." *National Labor Relations Board* v. *Denver Building Trades Council,* 341 U. S. 675, 692. For the primary picket line—"the customary means of enlisting the support of employees" (*Electrical Workers* v. *National Labor Relations Board,* 341 U. S. 694, 703)—has meaning and efficacy precisely because workers approaching it, particularly members of the same or another labor organization, commonly understand it as an appeal for aid and solidarity and commonly respond by refusing to cross the line. In doing so, the employees make common cause with the striking union and become participants in its concerted activity. *Gardner-Denver Co.,* 58 NLRB 81; *Rockaway News Supply Co.,* 95 NLRB, No. 50, 28 LRRM 1314. To deny such participation the status of "concerted activities, for * * * mutual aid or protection" within the meaning of Section 7 is to hold that although Congress protected the fundamental right of labor organizations to engage in primary picketing, it withheld protection from the normal employee response which makes that right effective.

Far from justifying, or diminishing the importance of, the result reached below, the court's alter-

native holding—that the employees must be denied the protection of Section 7 because their collective bargaining agent was not participating in the strike and had not authorized, although it had not forbidden, their action—reads a drastic and unprecedented restriction into the Act. This holding overlooks the fact that the statute confers not only collective bargaining rights, which are collectivized by the selection of a bargaining agent, but also individual rights such as the right to "form, join, or assist labor organizations" and the right to engage in "concerted activities, for * * * other mutual aid or protection." Denial of the latter rights to employees who have selected a bargaining agent vests in the agent rights which Congress reserved to the employees themselves. Cf. *Elgin, J. & E. Ry.* v. *Burley,* 325 U. S. 711. It is of manifest importance to employees, labor organizations, and employers to know whether the fundamental right of employees to refuse to cross a picket line and otherwise to lend sympathetic support to labor organizations depends upon the sanction and authorization of their bargaining representative.

We believe, in sum, that the issues in this case are of great importance in defining the scope of the protections the Act affords. As the opinion of the court below makes clear, the principles upon which its decision rests are by no means confined to the case where employees refusing to cross a picket line work for the same employer

as the striking group. While even this situation is sufficiently common to warrant consideration by this Court (*National Labor Relations Board* v. *Montag Bros.*, 140 F. 2d 730 (C. A. 5), enforcing 51 NLRB 366; *New York Telephone Co.*, 89 NLRB 383; cf. *Gardner-Denver Co.*, 58 NLRB 81; *Pinaud, Inc.*, 51 NLRB 235; *Rock Hill Printing and Finishing Co.*, 29 NLRB 673, 692-697, enforced, 131 F. 2d 171 (C. A. 4)), the questions presented here—whether the employees "assisted" a labor organization, whether they engaged in "concerted activities," whether they sought "mutual aid or protection," and whether their action was unprotected because not sanctioned, although not disapproved, by their bargaining agent—would be the same if the employees had respected a picket line directed against an employer other than their own. See, *e.g.*, *Cyril de Cordova & Bro.*, 91 NLRB, No. 187, 26 LRRM 1628; *Rockaway News Supply Co.*, 95 NLRB, No. 50, 28 LRRM 1314.

We submit that the decision of these questions by the court below, conflicting in principle and result with decisions of other courts of appeals, inserts restrictions into Section 7 which Congress never intended.

1. As this Court recently observed, the efforts of striking workers to induce others not to cross their picket lines is "traditional and permissible in a primary strike." *National Labor Relations Board* v. *Denver Building Trades Council*, 341

U. S. 675, 687. Equally traditional, well-recognized, and permissible is the tendency of union workers to yield to such inducements. See *Printing Specialties and Paper Converters Union* v. *LeBaron,* 171 F. 2d, 331, 334 (C. A. 9), petition for certiorari dismissed, 336 U. S. 949; *National Labor Relations Board* v. *Service Trade Chauffeurs* (C. A. 2), decided July 31, 1951, slip op. 4, 5; Barbash, *Labor Unions in Action* (1948), p. 129. The refusal of employees to cross a picket line—the very action the picketers solicit to aid them in bringing pressure on their employer—constitutes "assistance" to the striking labor organization in the most literal and fundamental sense. This fact alone should have led the court below to enforce the Board's order, since the right to "assist" labor organizations is conferred by Section 7 independently of the right to engage in concerted activities, and its exercise is protected without regard to whether the "assistance" may also amount to "concerted activity."

The court below also erred, however, in holding that, because the employees acted individually and sought no immediate benefit from the employer for themselves, their refusals to cross the picket lines were not "concerted activities for * * * mutual aid or protection." To focus on whether the employees acted in concert vis-a-vis each other is to overlook the salient fact that in "refusing to cross the * * * picket line [the employees were]

making common cause and acting in concert with the [striking union]." *Rockaway News Supply Co., supra.* Since the activities are "concerted" in this sense, it is irrelevant, for the purposes of this issue, that the employees who refused to cross did not act in concert with each other.[9]

Nor does the fact that the employees had no immediate stake in the outcome of the striking

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[9] In *National Labor Relations Board* v. *International Rice Milling Co.*, 341 U. S. 665, this Court held that a union engaging in a primary strike and persuading employees of a neutral customer not to cross its picket line, had not violated Section 8 (b) (4) of the amended Act which forbids a labor organization "to induce or encourage the employees of any employer to engage in a strike or a concerted refusal in the course of their employment * * * to perform any services" where such inducement is directed toward certain proscribed objects. The opinion in that case states that the language of Section 8 (b) (4) "contemplates inducement or encouragement to some concert of action greater than is evidenced by the pickets' request to a driver of a single truck to discontinue a pending trip to a picketed mill." 341 U. S., at 671. But the conclusion that an individual employee refraining from crossing a picket line does not "engage in a strike or a concerted refusal" to work as contemplated by Section 8 (b) (4) does not alter the fact that such an employee assists the picketers, allies himself with them, and thereby engages in one of the broadly conceived "concerted activities" covered by Section 7. See the Board's memorandum in opposition to the petition for rehearing in the *International Rice Milling* case. Indeed, the amended Act makes it clear beyond doubt that Congress has recognized that assistance to a labor organization constitutes a "concerted" activity. Section 7, as amended, after declaring the right "to form, join, or *assist* labor organization," specifies the further right "to engage in *other* concerted activities" (Italics added). While this language gives more literal recognition to the reality we have stressed (the word "other" which we have italicized did not appear in the original Act), it was neither intended nor required to broaden the range of the "concerted activities" protected by the Act prior to its amendment. See H. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 38.

union's dispute warrant the conclusion that their activities were not designed for "mutual aid or protection" within the meaning of Section 7. As Judge Learned Hand said in *National Labor Relations Board* v. *Peter Cailler Kohler Co.*, 130 F. 2d 503, 505-506 (C. A. 2):

> * * * When all the other workmen in a shop make common cause with a fellow workman over his separate grievance, and go out on strike in his support, they engage in a "concerted activity" for "mutual aid or protection," although the aggrieved workman is the only one of them who has any immediate stake in the outcome. The rest know that by their action each one of them assures himself, in case his turn ever comes, of the support of the one whom they are all then helping; and the solidarity so established is "mutual aid" in the most literal sense, as nobody doubts. So too of those engaging in a "sympathetic strike," or secondary boycott; the immediate quarrel does not itself concern them, but by extending the number of those who will make the enemy of one the enemy of all, the power of each is vastly increased. It is one thing how far a community should allow such power to grow; but, whatever may be the proper place to check it, each separate extension is certainly a step in "mutual aid or protection." Cf. *Fort Wayne Corrugated Paper Co.* v. *National Labor Relations Board,* 7 Cir., 111 F. 2d 869, 873, 874. It is true that in the past courts often failed to recognize the interest

> which each might have in a solidarity so obtained (e.g. *Duplex Printing Press Co.* v. *Deering,* 254 U. S. 443, 471, 472, 474, 41 S. Ct. 172, 65 L. Ed. 349, 16 A.L.R. 196), but it seems to us that the act has put an end to this.

In the amended Act Congress, recognizing the extent to which employees seek "mutual aid or protection" through sympathetic action in disputes to which they are not immediate parties, decided to mark the boundary of permissible sympathetic action at secondary boycotts. It thereby continued intact the Wagner Act's protection of sympathetic action which, as in this case, is no more than a normal concomitant of a primary strike. It is clear, under the amended Act, as under the original Act, that the ITTU was entitled to seek the support of the employees involved in this case, seven of whom were members of ITTU, by picketing their employer's Chicago properties; it is equally clear that in granting such support the employees, all but one of whom were members of the picketing union,[10] were acting for "mutual aid or protection."

Taking a contrary, restricted view of "mutual aid or protection," ascribing an unrealistic mean-

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[10] While the employees' membership in the striking union makes their interest patent, the analysis outlined above demonstrates that their refusal to cross the picket line would have been protected under the Act even if their refusal had been motivated solely by reluctance to cross any picket line, even one of a union to which they did not belong. See, *Rockaway News Supply Co., supra; Cyril de Cordova & Bro., supra.*

ing to "concerted activities" and totally disregarding the right to "assist" labor organizations, the court below has reached a result in conflict with the uniform holdings of the Board and other courts of appeals which have consistently accorded the protection of Section 7 to employees who, by refusing to cross picket lines or by other lawful means, have lent sympathy or support to striking workers. *National Labor Relations Board* v. *Montag Bros.*, 140 F. 2d 730 (C. A. 5), enforcing 51 NLRB 366; *National Labor Relations Board* v. *J. G. Boswell Co.*, 136 F. 2d 585 (C. A. 9); *Rockaway News Supply Co.*, 95 NLRB, No. 50, 28 LRRM 1314; *Cyril de Cordova & Bro.*, 91 NLRB, No. 187, 26 LRRM 1628; *New York Telephone Co.*, 89 NLRB 383; *Gardner-Denver Co.*, 58 NLRB 81; *Pinaud, Inc.*, 51 NLRB 235; *Rock Hill Printing & Finishing Co.*, 29 NLRB 673, 692-697, enforced, 131 F. 2d 171 (C. A. 4); *Surpass Leather Co.*, 21 NLRB 1258, 1274-1275; cf. *Club Troika, Inc.*, 2 NLRB 90. Thus, in *National Labor Relations Board* v. *Montag Bros., supra,* without questioning the correctness of the Board's conclusion that an individual employee's refusal to cross a picket line is "concerted action [which] is lawful and is accorded full protection by the Act" (51 NLRB, at 372)[11] the court enforced a Board order based

[11] The quoted language, which is from the trial examiner's intermediate report, was adopted by the Board in its decision. 51 NLRB, at 366.

upon this conclusion.[12] That case, like this, involved a strike in one department of the employer's enterprise and refusals by employees of another department to cross a picket line. There, as here, the employees respecting the picket line had no personal stake in the immediate objectives of the strikers. And, in *National Labor Relations Board* v. *J. B. Boswell Co., supra,* an employee was held to be protected by Section 7 against discrimination for her supposed sympathy with and assistance to a union to which she did not belong. Unlike the employees here, the employee in *Boswell* was not a member of any union and was not even employed in the industry dealt with by the union she was thought to have assisted. Clearly, her stake in the union's activities was far more remote than the concern of the employees in this case with a union to which most of them belonged and which represented fellow-employees in the same enterprise.[13]

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[12] The Board had found that the reasons for the discrimination against the employees involved in *Montag* included other union activities antedating the refusals to cross a picket line. The Board concluded, however, that the picket line incident "was the consideration which influenced [the employer] in refusing to reinstate them." 51 NLRB, at 373. It seems clear, therefore, that if it had rejected the Board's view that the refusals to cross the picket line were protected, the court would not have held simply, upon "careful consideration of all the evidence * * *, that there was substantial evidence to warrant the Board in its findings and conclusions." 140 F. 2d, at 731.

[13] It is noteworthy that the court in the *Boswell* case (136 F. 2d at 595) cited and quoted from an earlier holding of the court below, in *Fort Wayne Corrugated Paper Co.* v. *National Labor Relations Board,* 111 F. 2d 869, 874,

2. The need for review is enhanced, we submit, by the court's alternative ground for its decision. For the novel holding that, even if their refusals to cross the picket lines would otherwise have been protected, the employees in this case must be denied protection because their bargaining agent had not directed or expressly authorized their action distorts the plain language and purpose of the Act.

Nothing in the Act supports the view that employees represented by a bargaining agent lose the protection of the statute when they engage in sympathetic activities, unrelated to collective bargaining with their employer on their own behalf, unless their activities command the agent's explicit consent. The Act confers rights, not upon labor organizations as such, but upon "employees." See *National Labor Relations Board* v. *Schwartz*, 146 F. 2d

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that "the employee's right to join and participate in union activities outside his own employment is clear." We believe that the present decision marks a departure, not only from precedents of other courts, but from the court's own decisions in the *Fort Wayne* case and in *Rapid Roller Co.* v. *National Labor Relations Board*, 126 F. 2d 452. In *Fort Wayne*, the court held that an employer had violated the Act when he discharged an employee whose activities in a union representing employees of the employer's customer led to resentment and withdrawal of patronage by the customer. In *Rapid Roller*, the court found an unlawful discrimination in the discharge of employees who, despite their non-membership in the striking union, demonstrated "their sympathy for the union" by refusing to act as strikebreakers. In neither case did the court deem it material, as it does here, that the employees involved sought no immediate personal advantage from their employers as a result of the activities with which they sympathized or assisted. Nor did the court find it fatal to the protection accorded in the *Rapid Roller* case that the employees refusing to work as strikebreakers did not decide as a group on their position with respect to the strike.

773, 774 (C. A. 5); *Joanna Cotton Mills Co.* v. *National Labor Relations Board,* 176 F. 2d 749, 752 (C. A. 4); *National Labor Relations Board* v. *Clausen,* 188 F. 2d 439, 443-444 (C. A. 3). While Section 9 (a) provides that an agent chosen by the majority shall be the exclusive representative of all "for the purposes of collective bargaining in respect of rates of pay, wages, hours of employment, or other conditions of employment," this provision carries no suggestion that the existence of a representative so collectivizes all of the employees' rights under Section 7 as to make each and every one of them exercisable only through, or with the express consent of, the representative. Section 9 (a) leaves intact the declaration of Section 7 that employees have, in addition to the right "to bargain collectively through representatives of their own choosing," the further right "to engage in concerted activities, for the purpose of collective bargaining *or other mutual aid or protection*" (italics added). Indeed, even as to collective bargaining itself, the Act preserves an important area to the autonomous action of employees in the adjustment of grievances (proviso to Sec. 9 (a) of the Act.)

Of course, the exclusive status of a collective bargaining representative would be impaired if individual employees were permitted to usurp its statutory function of negotiating with the employer. See *J. I. Case Co.* v. *National Labor Rela-*

tions Board, 321 U. S. 332. It was for this reason that a minority group of "wildcat" strikers was held unprotected in *National Labor Relations Board* v. *Draper Corp.,* 145 F. 2d 199 (C. A. 4), when it struck "for the purpose of influencing the bargaining being carried on by the chosen representatives of all the employees." *Id.,* at 203. But in the wholly different situation presented here the reliance of the court below on the *Draper* decision is misplaced.[14] The employees in this case, in refusing to cross the picket lines, made no demands upon the respondent for themselves and took no action which in any way impinged on the exclusive right of their bargaining agent to treat with their employer for them As the Board observed (B. A. 11), "the concerted activity engaged in by the demotees bore no relationship, other than mere temporal coincidence, to the then current bargaining negotiations between the CTTU, their representative, and the Respondent." This accident of "temporal coincidence" does not alter the fact that the employees were not attempting to usurp or

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[14] Expressly limiting its decision, in language which indicates its inapplicability here, the court in *Draper* wrote (145 F. 2d, at 205):

> We do not mean to say, of course, that a strike can be called only by a bargaining union, or that less than a majority of employees will not be protected when they go on strike in protection of their rights. See *Firth Carpet Co.* v. *N. L. R. B.,* 2 Cir., 129 F. 2d 633. What we do mean to say is that minorities who engage in "wild cat" strikes, *in violation of rights established by the collective bargaining statute,* can find nothing in that statute which protects them from discharge. [Italics added.]

affect the function of their representative to bargain exclusively for them.

Contrary to the view of the court below (R. A. 48), it by no means follows that because the employees could not act independently of their representative to seek benefits for themselves, they could not, without their agent's express approval, lend their sympathetic support to fellow workers engaged in a dispute which did not concern their own wages, hours or working conditions. Even if the employees involved in this case had been joined by all of the employees in the unit in refusing to cross the ITTU picket line, their action still would have left the statutory right of their representative to bargain for them and conclude an effective contract undiminished, unquestioned and unimpeded. The court's error, we submit, lay in mistakenly attaching significance to the fact that a widespread refusal of the Chicago employees to cross the picket line would have effected a work stoppage, just as would have occurred if they had struck for collective bargaining objectives. The important fact is that the injury to respondent "due to [the] habitual unwillingness to cross picket lines," was "merely incidental to a traditionally lawful primary strike" (*National Labor Relations Board* v. *Service Trade Chaffeurs* (C.A. 2) decided July 31, 1951, slip op. 4, 5) which had no connection with the collective bargaining relationship between re-

spondent and CTTU, the representative of the employees involved here. Unless it be held that all rights conferred upon employees by Section 7 are collectivized by the selection of a bargaining agent, a holding at war with the basic philosophy of the Act (cf. *Elgin, J. & E. Ry.* v. *Burley,* 325 U. S. 711, 733-734, 738, 744), the similarity in impact upon the employer is immaterial so long as the employees refrain from interfering with or usurping the role of the bargaining agent.

CONCLUSION

The issues presented are of substantial importance in the administration of the Act, and the decision below conflicts in principle and result with the decisions of other courts of appeals. It is respectfully submitted that this petition for a writ of certiorari should be granted.

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Solicitor General.

GEORGE J. BOTT,
General Counsel,
National Labor Relations Board.

AUGUST, 1951.

APPENDIX

The pertinent provisions of the original National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C., Secs. 151, *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.

* * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of

employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 249

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

ILLINOIS BELL TELEPHONE COMPANY,
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI.

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OPINIONS BELOW.

The opinion of the Court of Appeals (R. A. 44-50)* is reported at 189 F. 2d 124. The opinion of the National Labor Relations Board (B. A. 6-15) is reported at 88 N.L.R.B. 1171.

JURISDICTION.

The judgment of the Court of Appeals was entered on May 21, 1951. R. A. 51. The jurisdiction of this Court

* We have used the same abbreviations herein as are used in the petition, and "Pet." for petition. All italics are ours unless otherwise noted.

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was invoked under 28 U. S. C. 1254 and Section 10 (e) of the National Labor Relations Act, as amended.

STATEMENT OF THE CASE.

The petition presents three distinct questions, plus a footnote on the breadth of the order. Pet. 2. All three of those questions were determined favorably to the respondent by a unanimous Court of Appeals, and any one of them is sufficient by itself to defeat the Board. Furthermore, the second and third questions present a dilemma for the Board in which any attempt to establish its position on either only destroys its position on the other, while the respondent's defenses on both are entirely consistent. But even this is not the whole story. There was a fourth defense, involving the respondent's purpose, discussed at the end of this brief, which was urged and accepted below, but on which the Board has not sought certiorari. And finally, there were three other valid and wholly independent defenses which were argued at length but never reached or decided below, namely, the effect of the no-strike pledge of the supervisors' own bargaining agent,* the misconduct of the supervisors, and their lawful replacement prior to any offer to return to work.

---

* This defense is briefly mentioned in footnote 8 of the petition. The respondent has a much stronger case on this point than did the respondent in *N.L.R.B.* v. *Sands Mfg. Co.*, 306 U.S. 332 (1939), recently cited with approval by this Court in *International Union* v. *W.E.R.B.*, 336 U.S. 245, 257, 260, 269 (1949). The Board's opinion describes it as our "principal argument." B.A. 9.

REASONS WHY THE WRIT SHOULD BE DENIED.

While there is comparatively little dispute about the details of the evidence in this case, there was much argument below as to what inferences could properly be drawn from "the record considered as a whole." Section 10 (e) of the Act. As this Court has recently observed, such issues should be primarily determined by the Court of Appeals:

> "This Court will intervene only in what ought to be the rare instance when the standard appears to have been misapprehended or grossly misapplied."
>
> *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 494 (1951);
>
> *N.L.R.B.* v. *Pittsburgh Steamship Co.*, 340 U.S. 498 (1951).

And compare Jaffe, Judicial Review: "Substantial Evidence on the Whole Record," 64 Harv. L. Rev. 1233 (1951), particularly 1249-51.

Before the petitioner can escape the rule of these cases, it must clearly demonstrate a "real and embarrassing" conflict or other compelling reason why this Court should pass on each and all of the four alternative grounds invoked by the Court below. An opinion for the Board on less than all of them would be only dictum. Unless all four are to be reversed, and the respondent's other three defenses, which may also be urged in support of the lower court's result, are to be denied, the Board's order is still defective.

This case involves eight supervisors in a bargaining unit of 10,000* employees, who had a contract and a statutory bar-

* The Board omitted this fact from this Court's printed record; it was in the Board's brief below and appears at page 498 of the transcript of proceedings. About seventy-five Chicago operators also observed picket lines, but they lost nothing. B.A. 123, Transcript 498.

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gaining agent, but who chose as individuals not to cross the picket lines of another union (ITTU) during the very time in 1947 that their own bargaining agent (CTTU) was actively negotiating a new contract for them without joining the strike in any way. The supervisors were replaced during their absence but not discharged; and the ITTU suffered no legal harm. It was this rare combination of facts which moved the Court below to sustain four defenses in one opinion. The attempt to distort and magnify that decision as if it had sweeping implications for any ordinary fact situation simply has no basis in reason.

1. In stating its first question, the petitioner correctly says that the supervisors were acting "as individuals." Pet. 2. There was nothing "collective," "concerted" or "mutual" in their activity, and the Court of Appeals was plainly required by the very language of the statute to hold that it had no application to them. R.A. 47. Both Section 1 of the statute and the whole history of the Act demonstrate that it is collective action about which Congress was concerned and not what individuals might decide to do on their own. At the last term this Court relied on this very distinction between concerted and individual conduct. *N.L.R.B.* v. *International Rice Milling Co.*, 341 U.S. 665, 670-71 (1951). Certainly this Court did not give "concerted" a different meaning in Section 8(b)(4) of the Act than the same word has in Section 7 of the same statute. The trial examiner based his finding of concerted activity (B.A. 37) on a Board decision subsequently found invalid.* *N.L.R.B.* v. *Massey Gin Works,* 173 F. 2d 758 (C.A. 5, 1949), cert. den., 338 U.S. 910 (1950). Accord: *N.L.R.B.* v. *Westinghouse Corp,* 179 F. 2d 507 (C.A. 6, 1949); *Joanna Cotton Mills* v. *N.L.R.B.,* 176 F. 2d 749 (C.A. 4, 1949).

2. In stating its second question, the petitioner says that "the motive of the employees [was] . . . not to

* The Board adopted his finding without modification. B.A. 7.

seek benefit from the employer *for themselves* but *solely* to aid the pickets." Pet. 2. Actually there is no evidence in this record on which to base any satisfactory inference as to what purpose motivated the absent supervisors or any of them. (As we shall show in the third section of this brief, the *effect* of their action on the CTTU is clear enough.) The Court below properly found that there was no proof of any "*purpose* of . . . *mutual* aid or protection," as expressly required by the final phrase of Section 7 of the Act. R.A. 48.

As far as we can tell the petition does not question the general principle that there must be a "purpose of . . . mutual aid or protection" in every case under Section 7, but merely argues that an "immediate stake" is not necessary. Pet. 12. Even if we should concede this claim *arguendo,* the question still remains what "future" "mutual" "stake" was actually being sought by the supervisors in this case. Certainly that requirement is not satisfied by merely overlooking it, as the petition attempts to do. The supervisors must still exhibit some "purpose" of self-interest before there can be any activity for "*mutual* aid or protection." *Joanna Cotton Mills* v. *N.L.R.B.,* 176 F. 2d 749 (C.A. 4, 1949); *N.L.R.B.* v. *Reynolds Pen Co.,* 162 F. 2d 680 (C.C.A. 7, 1947). Without clearly avowing it, the petition may be urging that these individuals expected that at some indefinite future date the ITTU would help them bargain for different wages or working conditions. The Court below considered any such inference as to the supervisors' "purpose" to be "dubious" and was unable to find any supporting proof for it. R.A. 47-8. Certainly the petition cites none. Neither is there any adequate finding of fact in either the Board's decision or the trial examiner's report as to the "purpose" of these particular supervisors. B.A. 12, 29. For all that appears in the record, some of the supervisors may have been taking action about their own immediate wages, which the Board has ex-

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pressly conceded (R.A. 48) would remove them from the coverage of the Act under the other facts of this particular case. While most of the absent supervisors testified that they belonged to ITTU, there is nothing in the record to show that any of them intended to act as a member of that union, or that any Company action was based on membership, or even that it had any knowledge on that subject so far as seven of the eight were concerned.*

The record fails to show that the supervisors had any "purpose of . . . mutual aid." They took no active part in the picketing or other strike activity. R.A. 3, 4, 8, B.A. 62, 72. Mrs. Winder returned to work as soon as the pickets were withdrawn although the strike was still on. B.A. 84. Mrs. Jungbluth "didn't believe in crossing the picket line." B.A. 68. Miss Keuther thought it was un-American to cross any picket line. B.A. 75. Mrs. Gaittens testified that she feared violence, but would not have crossed the picket line "anyway" whether or not she belonged to the ITTU. R.A. 10-11. The others likewise reached individual decisions, apparently without any consultation with the ITTU, or any concern as to what union had posted the pickets. R.A. 8, 12-14, B.A. 62, 72, 82, 88. The most that could possibly be said on this score would be that *some* of the supervisors felt that all picket lines should be automatically respected, regardless of the reason for the picketing or the issues or persons involved. Any finding that they hoped for future aid from the ITTU would be a mere matter of speculation without supporting evidence of any kind. *N.L.R.B.* v. *Hart Cotton Mills,* C.C.H. Labor Law Service, par. 66473 (C.A. 4, 1951); *Progressive Mine Workers* v. *N.L.R.B.,* 187 F. 2d 298 (C.A. 7, 1951); *Pittsburgh Steamship Co.* v. *N.L.R.B.,* 180 F. 2d 731 (C.A. 6, 1950), affirmed, 340 U.S. 498 (1951); *Sax* v.

* Mrs. Winder testified to a conversation about union business before the strike. The other party to the alleged conversation denied any such occurrence, and neither the examiner nor the Board made any finding as to which witness was telling the truth. B.A. 8.

N.L.R.B., 171 F. 2d 769 (C.A. 7, 1948); *Interlake Iron Corp.* v. *N.L.R.B.*, 131 F. 2d 129 (C.C.A. 7; 1942); *Hazel-Atlas Co.* v. *N.L.R.B.*, 127 F. 2d 109 (C.C.A. 4, 1942); *N.L.R.B.* v. *Riverside Mfg. Co.*, 119 F. 2d 302 (C.C.A. 5, 1941). In such an uncertain state of the evidence the Board had no right to make any order whatever. *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474 (1951).

It should be emphasized that these supervisors already had a bargaining agent which was bargaining for them at the very time they refused to work. It had made a contract concerning their wages and working conditions which was still in effect. B.A. 174-5. The ITTU had no right to bargain for them, and they had no right to bargain for themselves. Pet. 18-21. The Board has expressly conceded that they had no right to strike about their own wages, hours or working conditions at any time here material. R.A. 48. By the specific language of the Board's concession it was "the expiration of their agreements" and *not* the expected date of any change in wages, hours or working conditions that barred any claim of a right to strike. Certainly if the supervisors were outside the protection of the Act for that fundamental objective at the times here material, Congress did not intend to afford greater protection for the far lesser objective of assisting a different group in a different bargaining unit which could not legally reciprocate. Subtracting all demand for any immediate gain by the supervisors cannot increase their rights or convert an otherwise unprotected work stoppage by them into a protected one.

In its effort to find a conflict between circuits, the Board cites four decisions in which the facts were obviously different from the case at bar. In *N.L.R.B.* v. *P.C.K. Swiss Chocolate Co.*, 130 F. 2d 503 (C.C.A. 2, 1942), the Court expressly found that there was a basis in the evidence for the inference that the union of employees expected that

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their clearly collective action to which the employer objected would produce "mutual aid" in subsequent bargaining from certain outsiders. In *N.L.R.B.* v. *Rock Hill Printing Co.*, 131 F. 2d 171 (C.C.A. 4, 1942), *N.L.R.B.* v. *Montag Bros.*, 140 F. 2d 730 (C.C.A. 5, 1944), and *N.L.R.B.* v. *J. G. Boswell Co.*, 136 F. 2d 585 (C.C.A. 9, 1943) (one judge dissenting), the courts enforced the Board's orders; but the opinions do not define "mutual aid" or the scope of Section 7.* In all four cases the only statutory bargaining agent which was present or probable was the one which the discharged employee was thought to be assisting; there was no proof of any lawful reason for discharge; and there was much evidence of employer bias against unions. In each case the facts were such that the courts had some basis for accepting any inference drawn by the Board that the discharged employees actually expected future aid from the union involved. Moreover, since all of the alleged judicial conflicts were decided before the 1947 amendments to the Act, it does not follow that

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* If the three latter cases had any possible bearing here, they would still be either clarified or overruled for this particular factual setting by the later cases of *N.L.R.B.* v. *Draper Corp.*, 145 F. 2d 199 (C.C.A. 4, 1944), *Joanna Cotton Mills* v. *N.L.R.B.*, 176 F. 2d 749 (C.A. 4, 1949), *N.L.R.B.* v. *Massey Gin Works*, 173 F. 2d 758 (C.A. 5, 1949), and *N.L.R.B.* v. *Warner Bros.*, C.C.H. Labor Law Service, par. 66512 (C.A. 9, 1951). The Board also contends that the case at bar overrules two earlier decisions in the Seventh Circuit, *Fort Wayne Paper Co.* v. *N.L.R.B.*, 111 F. 2d 869 (C.C.A. 7, 1940), and *Rapid Roller Co.* v. *N.L.R.B.*, 126 F. 2d 452 (C.C.A. 7, 1942), one of which was relied on in the *Boswell* and *P.C.K. Swiss Chocolate* cases. Judge Kerner, who also participated in those two prior cases, apparently found no conflict here. Our comments on the cases from other circuits are equally applicable to the two earlier decisions from the Seventh Circuit.

While *N.L.R.B.* v. *Denver Building Trades Council*, 341 U.S. 675 (1951), and *International Brotherhood* v. *N.L.R.B.*, 341 U.S. 694 (1951), are also cited in the petition, they were both concerned with action which was clearly mutual and concerted. Obviously in those cases this Court was not defining employer duties, but union duties under a different and subsequent part of the Act.

the same courts would reach the same results today "on the record considered as a whole" in view of the principles now established by *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474 (1951).

In any event it is unnecessary to speculate what the supervisors' rights and purposes would have been in this case if there had been no CTTU bargaining in progress, no CTTU and no contract combined with proof of anti-union bias on the part of the respondent. The inferences that might be drawn from such a situation cannot be supported on this record. A case of that type might resemble the four court cases cited in the petition as conflicting, but it would not be the case at bar.

The Board apparently recognizes the weakness of its claim of any conflict with other judicial authority, and relies primarily on its own decisions on this point, notably in footnote 10 and on pages 8, 10 and 15 of the petition, including three decisions subsequent to the decision here. This is the most obvious kind of bootstrap lifting, which the Board did not attempt below. If a Board decision could establish a conflict for certiorari, the Board would be automatically entitled to the writ in every case. If its other decisions had any application to this case, they would be subject to the very infirmities of its order here. That the Board is often wrong is dramatically shown by the fact that its decision in this very case relies in part on six of its prior decisions which in the eighteen months intervening have been held to be erroneous by the courts.

3. In stating its third question, the petitioner concedes that the supervisors' own union (CTTU) was "not participating in the strike." Pet. 2. It gives no weight to the highly important facts that the CTTU was actively bargaining with the respondent at the very same time, that it extended its contract just before the ITTU strike began and again during that strike, that it stated in those extensions

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its desire for "stabilized labor relations" and "to avoid all possible economic repercussions," and that over 99% of its bargaining unit were sufficiently opposed to the strike to cross the picket lines every day and work in plain defiance of all of the tradition which the Board considers to be "normal" and "habitual" for picket lines. B.A. 25, 174-6, R.A. 4, 8, 12, 26, 49, Pet. 4, 7, 8, 10, 11, 14, 20. Neither does the Board repeat the concession made on page 36 of its brief below that a strike would be an "additional complication" which the parties hoped to avoid during the bargaining period.*

Faced with a specific bargaining struggle, it was the statutory right and duty of CTTU to decide whom it would support, and when and over what issues its unit should strike. By the two contract extensions the CTTU plainly manifested its belief that it would be to the best interests of its bargaining unit to stay out of the ITTU strike. To the extent that those represented by CTTU observed that strategy, CTTU unity and bargaining power would necessarily be demonstrated and increased; to the extent that they dissented and observed ITTU picket lines, CTTU organization would be weakened by division, and its plans and decisions nullified. Nothing could be more important to a union engaged in bargaining than its own unity. That is the foundation on which all of its bargaining demands must rest. If a union is divided, its bargaining position is seriously weakened and may be destroyed altogether.

The Board repeatedly speaks of ITTU as if it were the supervisors' own union. Pet. 4, 8, 14, 16. But the very statute which created the Board made the CTTU the *sole* bargaining agent for the supervisors. An employee cannot change his statutory agent merely by joining a different union. It is the majority which controls.

* That concession was coupled with the contention that the *only* cause for strikes sought to be affected by the extension agreements was the lack of any CTTU contract.

There is nothing "drastic and unprecedented" or "novel" or distorted (Pet. 9, 17) in the holding (R.A. 48-50) that the majority agent determines these questions of strategy and tactics of collective bargaining for all members of the bargaining unit, as their "exclusive representative." That is what Section 9 (a) of the Act says; that is why a majority agent is selected; that is why contracts with employees can constitute an unfair labor practice even if they should meet the literal words of Section 7. Such authority is essential to effective bargaining, and is not "reserved to the employees themselves." Pet. 9, 17-18. As this Court held in *J. I. Case Co.* v. *N.L.R.B.*, 321 U.S. 332, at 339 (1944):

> "The workman is free, if he values his own bargaining position more than that of the group, to vote against representation; but *the majority rules*, and if it collectivizes the employment bargain, individual advantages or favors will generally in practice go in as a *contribution* to the collective result."

Accord: *Medo Corp.* v. *N.L.R.B.*, 321 U.S. 678 (1944); *National Licorice Co.* v. *N.L.R.B.*, 309 U.S. 350 (1940); *Order of Railroad Telegraphers* v. *Railway Express Agency*, 321 U.S. 342 (1944).

The Board expressly concedes this principle so far as formal "negotiating," "demands" and even any seeking of "benefits for themselves" are concerned. Pet. 18-20. It now purports to accept the rule of *N.L.R.B.* v. *Draper Corp.*, 145 F. 2d 199 (C.C.A. 4, 1944),* that it would be contrary

* The *Draper* case was cited with approval in *International Union* v. *W.E.R.B.*, 336 U.S. 245, 257 (1949). It was recently followed by the Ninth Circuit in *N.L.R.B.* v. *Warner Bros.*, C.C.H. Labor Law Service, par. 66512, in refusing to enforce the Board's *Columbia Pictures* decision, relied on in footnote 19 of the Board's opinion here. B.A. 12. Other cases approving the *Draper* decision are *N.L.R.B.* v. *Reliable Newspaper Delivery*, 187 F. 2d 547 (C.A. 3, 1951), *N.L.R.B.* v. *Reynolds Pen Co.*, 162 F. 2d 680 (C.C.A. 7, 1947), *Hamilton* v. *N.L.R.B.*, 160 F. 2d 465 (C.C.A. 6, 1947), and

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to the purposes of the Act to protect a minority group which was "influencing the bargaining" or "interfering with" the bargaining agent. Pet. 19, 21. But it contends that the supervisors' absence from work while the CTTU bargaining was actually in progress was a "mere temporal coincidence," which did not "impinge on" or "affect the function" of the CTTU, and that it was "merely incidental" and "had no connection with the collective bargaining relationship." Pet. 19-20. It concedes the "similarity in impact upon the employer," but assumes that such impact and "injury" could not possibly produce the slightest reaction at the bargaining table even if "all of the employees in the unit" stayed away from work. Pet. 20-21. If the Court of Appeals had accepted this strange assumption it would have deserved the epithet "unrealistic" which the Board so freely applies. Pet. 14. The supervisors' conduct can not be isolated from the rest of the factual setting in which it occurred. It is too obvious for argument that the course of any collective bargaining is always vitally affected by whether the employees in that bargaining unit are actually on the job or not.* The Court of Appeals so held. R.A. 49. Certainly a union contract without workers is a far less valuable, "effective," and "unquestioned" document (Pet. 20) than one made with a unit which is immediately ready and willing to perform it. Absence from work, even of a minority, may well be more serious in its net effect on the statutory agent than any express demand for separate bargaining.

In the second place, there is no way by which the Board's distinction on this point can be harmonized with its con-

N.L.R.B. v. *Indiana Desk Co.*, 149 F. 2d 987 (C.C.A. 7, 1945). In the Court below the Board contended unsuccessfully that the *Draper* case should not be followed.

* In its brief below the Board merely claimed that it was "irrelevant" even if the supervisors' absence "tended to weaken the CTTU's bargaining position" and "diminished" its "possibility of success."

tention under the second question presented in its petition, *i.e.*, that the supervisors' "purpose" was "mutual aid or protection." Although repeatedly challenged, the Board has never explained how it can be inferred that the supervisors' activities were intended to have an effect on their own personal interests and at the same time were "unrelated to collective bargaining" (Pet. 17-20) about those same interests. Clearly their acts would affect both or neither. This dilemma is not avoided by the repeated disavowal of any "immediate" interest in the petition (pp. 7, 11, 12, 14, 16, 17), since collective bargaining inevitably involves both immediate and long term objectives.

But whether the supervisors *intended* to be absent in their own present or future interest, as required by the statutory phrase "purpose of . . . mutual aid or protection," or intended to be absent "solely to aid the pickets," as the Board simultaneously insists (Pet. 2), the practical *effect* on the employer and on the CTTU bargaining negotiations of the fact of their absence would be highly significant, as the Court of Appeals held. R.A. 49.

The Board's attempt to distinguish the *Draper* case (Pet. 19) is wholly unsatisfactory. The *Draper* strikers attempted only a minimum of minority influence on the bargaining then being conducted by their statutory bargaining agent. They were not trying to do any direct bargaining themselves; their interference was limited to a demand (soon withdrawn) that the company bargain with the majority representative immediately instead of "stalling." Nor was their action ever "forbidden" by their union. Compare Pet. 2, 9, 10. There was not the slightest indication that they intended to be represented at such a conference by anyone other than their

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regular bargaining agent.* Indeed, it is highly significant that here, unlike the *Draper* case, there was never any ratification or approval of any character by the bargaining agent, the CTTU.

The absent supervisors were clearly more "usurping" of the functions of their majority representative than were the *Draper* strikers. Indeed the Board's own trial examiner and the attorney for ITTU (who had played a very prominent part in the strike) joined in describing their activities as the "rank and file strike." R.A. 2, 6. This term is only a more euphemistic expression for that particular type of unauthorized wildcat strike which seeks to influence bargaining in a manner different from the program of the union representing the employees in question. As was held in *N.L.R.B.* v. *Brashear Freight Lines*, 119 F. 2d 379, 382 (C.C.A. 8, 1941), any such attempt at minority bargaining (even where there is no majority agent) is "at their peril in so far as compulsory reinstatement is concerned." The case at bar is clearly in harmony with the decisions.** Indeed, so far as this third question is concerned the petition does not even *claim* that any "real and embarrassing" conflict exists.

The Board began this case on the theory, among others, that it involved "concerted activities for the purposes of

---

* That the *Draper* strikers were completely loyal to their majority union is shown by the fact that they immediately advised Long, the International representative, of the strike and he promptly telephoned the Company and negotiated for their return. 52 N.L.R.B. 1477, 1490 (1943). Although their bargaining agent did not *authorize* the strike (presumably in deference to the war-time "no strike" pledge), it thus came to the immediate assistance of the strikers and did all that it could, as a practical matter, to ratify their conduct by promptly filing the very charges upon which the Board's proceeding was based.

** Of the cases cited in this section of the petition, the Board's orders were sustained in four. The *Case* decision is discussed on page 11 of this brief. The others are *N.L.R.B.* v. *Schwartz*, 146 F. 2d 773 (C.C.A. 5, 1945), *N.L.R.B.* v. *Clausen*, 188 F. 2d 439 (C.A. 3,

collective bargaining.'"* After it was pointed out that the individuals involved could not lawfully bargain for themselves or be represented by ITTU, the Board faced about and insisted that the supervisors were asserting "protected interests outside of and unconnected with the bargaining process or its results." B.A. 11-12. And yet when it came to draw its order the Board directed the respondent to "*cease*" interfering with the right of its employees "to *bargain collectively* through representatives of their own choosing, and to engage in concerted activities *for the purpose of collective bargaining* . . ." B.A. 15. Thus the Board is inconsistently asking this Court to protect the very minority activities which were condemned in the *Case, Medo, Draper,* and other decisions, and which in its brief to this Court it asserts are not involved in this case in any way. Such obvious unfairness was a major factor in the dissatisfaction which produced the 1947 amendments; it does serious harm to the orderly administration of the statute.

4. There is still a further ground for the decision below on which certiorari has not been requested. Obviously a supervisor's absence is sufficient reason for her replacement and demotion unless it can be shown that the employer was acting for the purpose of discouraging concerted activity. *Universal Camera Corp.* v. *N.L.R.B.,* 340 U.S. 474 (1951); *N.L.R.B.* v. *Pittsburgh Steamship Co.,* 340 U.S. 498 (1951); *N.L.R.B.* v. *Potlatch Forests,* 189 F. 2d 82 (C. A. 9, 1951);** *Western Cartridge Co.* v. *N.L.R.B.,* 139 F. 2d 855

1951), and *N.L.R.B.* v. *Service Trade Chauffeurs,* C.C.H. Labor Law Service, par. 66500 (C.A. 2, 1951). In these three cases the employee activity was plainly both collective and for mutual aid, and there was no approval of any employee interference with any bargaining agent.

* The quotation is from the Board's complaint, which the Board omitted from this Court's printed record.

** The Board's decision in the case at bar relies in part on its *Potlatch* order (B.A. 12), which the Ninth Circuit subsequently held invalid in the case cited in the body.

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(C.C.A. 7, 1943). Even on the Board's theories there was no concerted activity here except as between each individual and the ITTU; hence some showing of discrimination against ITTU was essential to a valid order. So far as any complaint under Section 8 (3) of the Act is concerned the Board had the further burden of showing that the employer's acts had the effect of encouraging or discouraging membership in a labor organization. *N.L.R.B.* v. *Tennessee Coach Co.*, C.C.H. Labor Law Service, par. 66428 (C.A. 6, 1951); *N.L.R.B.* v. *Reliable Newspaper Delivery*, 187 F. 2d 547 (C.A. 3, 1951); *Progressive Mine Workers* v. *N.L.R.B.*, 187 F. 2d 298 (C.A. 7, 1951); *Stonewall Mills* v. *N.L.R.B.*, 129 F. 2d 629 (C.C.A. 5, 1942).

Respondent discussed the record at length in the Court of Appeals to show that there was not the slightest proof of hostility or favoritism against or for any union or against these supervisors. That Court so found in the final paragraphs of its opinion, and thus denied one of the findings which is essential to a valid order. R.A. 50.

CONCLUSION.

The peculiar facts of this case prevent it from having any wide significance. There is no conflict with the decisions of any circuit, and it is nowhere claimed in the petition that the decision below is in conflict with any decision of this Court. It is respectfully submitted that Judges Major, Kerner and Swaim were correct, and that the petition should be denied.

KENNETH F. BURGESS,
GORDON W. WINKS,
Attorneys for Respondent.

SIDLEY, AUSTIN, BURGESS & SMITH,
Of Counsel.

DARK PAGE BLEEDTHRU

No. 249

FILED

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CHARLES ELMORE C

APPENDIX TO RESPONDENT'S BRIEF

Vol. II

In the

United States Court of Appeals

For the Seventh Circuit

No. 10306

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

ILLINOIS BELL TELEPHONE COMPANY,
Respondent.

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

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1 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of:
Illinois Bell Telephone Company,
and
Illinois Telephone Traffic Division No. 14, successor of Illinois Telephone Traffic Union, N. F. T. W.
} 13-C-3187.

Room 2110, 176 West Adams Street,
Chicago, Illinois,
Tuesday, June 7, 1949.

* * * * *

Mr. Licari: At this time I wish to make a preliminary statement with respect to the issues in this proceeding, the short background from which the issues arose.

* * * * *

On the same day the strike commenced the alleged discriminatees in the complaint, although not directly involved in the strike, advised the employer that they would not return to work so long as a picket line was established in front of the respondent's premises.

Trial Examiner Bennett: Why do you say they were not directly involved in the strike?

Mr. Licari: Mr. Examiner, the 8(3)'s there were sympathetic strikers. They were not part of the striking union. Although some of the 8(3)'s belonged to the striking union, they were not within the same bargaining unit.

* * * * *

47 ANNE C. BENSCOTER, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

* * * * *

50 Q. (By Mr. Licari.) Did you engage in negotiations prior to the strike?

51 A. * * * Mr. Hackett was our chief negotiator, assigned to the case in my absence.

* * * * *

53 Q. Was that the only union involved in the strike?

A. You mean in the strike on April 7th?

Q. That is correct.

A. There were many unions throughout the country involved in the strike.

* * * * *

55 EDWIN R. HACKETT, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

* * * * *

Q. (By Mr. Licari.) * * * Will you relate to us the
56 circumstances surrounding the calling of the strike of the union involved in this case?

A. * * * Involved in the strike against the Illinois Bell Telephone Company, in addition to the union involved in this case, was the Commercial Telephone Workers Union, the Federation of Telephone Clerks of Illinois, the Association of Communication Equipment Workers, and the National Association of Communication Workers and the American Union of Telephone Workers.

DARK

Trial Examiner Bennett: They were all unions affiliated with the NFTW?

The Witness: These were all unions that were affiliated with the National Union of Telephone Workers.

We appointed a strike director and I acted as legal
57 counsel for the direction of the strike in addition to my duties as chief negotiator for three of the striking unions.

* * * * *

66 Q. Did you observe whether or not these girls had joined in a strike?

* * * * *

The Witness: From my observation none of these people involved here engaged in the strike.

* * * * *

81 *Cross-Examination.*

* * * * *

96 Q. (By Mr. Winks.) Now, in your testimony, Mr. Hackett, you referred to some twenty or twenty-two different items that were in controversy in negotiations, and I believe you said the failure to agree on those items is what caused the strike. At least, I so interpreted your testimony. Was I correct?

A. That is right.

Q. Now, did any of those twenty-two items affect any of the eight alleged demotees in this case?

A. No, sir.

* * * * *

PAGE BLEEDTHRU

103 CATHERINE E. BROPHY, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

* * * * *

108 Q. (By Mr. Licari.) Did you have any further conversation on that date with Mr. Leetz?

A. He said, "Well, rumors are flying." I said, "What do you mean, rumors are flying?" He said, "Rumors are flying." I said, "Will you be more specific?"

109 He said, "Well, the girls don't like you being out," and I said to him, "Mr. Leetz, I know there is a strain over there, but I am not taking any active part in it, and you know if I did the girls would all be out."

* * * * *

127 *Cross-Examination.*

* * * * *

128 Q. (By Mr. Robinson.) Didn't it have on the face of it a notation which informed you that it was the Illinois Telephone Traffic Union that was on strike?

A. I didn't pay that much attention, because I knew.

* * * * *

Q. And at that time the Illinois Telephone Traffic Union did not represent the unit in which you worked, did it?

A. They were not the bargaining agent, no.

Q. And the particular bargaining agent for your unit was who?

A. Chicago Telephone Traffic Union.

Q. And at that particular day and time there was

129 then in existence a contract between the Chicago Telephone Traffic Union and the Illinois Bell Telephone Company which had not expired then?

A. That is right.

* * * * *

133 Q. Have you ever seen a time since you have been on the "B" board when there wasn't a floor supervisor behind the "B" position?

A. At different times for short periods, say an hour or two hours, a "B" division has been vacated, yes.

• • • • •

160 Q. How many calls a day, let's say how many calls an hour will an operator average in handling on the "B" board?

A. Well, now, the average number of calls run, on the busy hours sometimes they run as high as 400 calls.

Q. Per hour?

A. That is right.

Q. Per operator?

A. That is right.

• • • • •

161 Q. Would you say, Miss Brophy, that the job of a floor supervisor was a responsible one?

A. Very much so.

Q. And is it a necessary function in the transmission of calls in the Illinois Bell Telephone system?

A. Definitely so.

Q. Do you think that the section could function satisfactorily without a supervisor?

162 A. No.

Q. Do you think it is necessary to fill the position of a supervisor at any time there is an absence?

A. Yes.

Q. On the "B" board at Austin?

A. Yes. I believe there is.

• • • • •

168 *Redirect Examination.*

• • • • •

184 Q. (By Mr. Hackett.) The union that you belong to, that you are a member of, the Illinois Traffic Union did not have a contract covering the people in the Chicago area where you work?

AGE BLEEDTHRU

185 A. No.

Q. And what union did have that contract?

A. The Chicago Telephone Traffic Union did have it.

* * * * *

Mr. Hackett: Is that clear, Mr. Examiner?

Trial Examiner Bennett: I think it is. Does the record reveal now which of those two it was that called the alleged rank and file strike?

Mr. Hackett: Yes, it does, sir.

Trial Examiner Bennett: And which was that?

Mr. Hackett: Illinois Telephone Traffic Union.

* * * * *

186 DOROTHY JUNGBLUTH, a witness called on behalf of the General Counsel, having been first duly sworn, was examined and testified as follows:

187 *Direct Examination.*

* * * * *

197 Q. (By Mr. Licari.) Now, after that did anything happen to your job? Did you continue as an operator?

A. Yes, for seven weeks.

Q. Did you request a change of positions?

A. No.

Q. Did the company ever offer you a change in position during those seven weeks?

A. Yes, they did. They offered me a stenographic position, but I refused.

Q. Would that entail a less salary than as an operator?

A. More.

* * * * *

200 *Cross-Examination.*

* * * * *

205 Q. (By Mr. Winks.) * * * Do you know who took over your work as a PBX placement supervisor?

A. Yes.

Q. Who did?

A. Miss LeTurneau.
Q. Dou you know when she took over that?
A. No. Shortly after I left but I couldn't say when.
Q. Didn't Mr. Halliday call that fact to your attention in his conversation with you?
A. He may have.
Q. At any rate—
A. I don't remember. He may have.

* * * * *

209 Q. As I understand it you worked in the Chicago toll office from 1937 to October 1946, is that correct?
A. Yes.
Q. So that at the time of this strike you had been working in the Chicago area for about six months?
A. Yes.
Q. And when you and Mr. Halliday had your conversation—I believe you said it was the first conversation on Wednesday—didn't you say to Mr. Halliday that you would prefer to work in the office where you had some eight or ten years' experience with the people over there in the toll office rather than in the Chicago PBX division?
A. I don't remember saying that.
Q. Are you prepared to say now that you did or did not say it?
A. I don't remember saying it.
Mr. Licari: The question has been answered, Mr. Examiner.
Trial Examiner Bennett: I think her recollection has been exhausted.

* * * * *

212 Q. That was a responsible job that you had there?
A. Yes.
Q. And had to be filled by some one if you weren't there?
A. Yes.
Q. I believe you testified that you were a member of the Communications Workers of America at the time of this strike, is that correct?
A. No, I was a member of the ITTU.
Q. At that time?
A. Yes.
Mr. Licari: What does the ITTU stand for?

AGE BLEEDTHRU

The Witness: Illinois Telephone Traffic Union.

Q. (By Mr. Winks.) Were you a member of that union on July 20, 1947?

A. Yes.

• • • • •

215 HELEN MACELLAIO, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

• • • • •

217 Q. (By Mr. Licari.) You saw the picket line?

A. Yes. I couldn't go through the picket line.

Q. How did you know that was the picket line of the striking union?

218 A. Well, there was about twenty of them out there and I had seen signs and pickets but I couldn't read them, I didn't go that close.

• • • • •

224 *Cross-Examination.*

Q. (By Mr. Robinson.) When you went down to the Van Buren office on April 7th, how many pickets were down there?

A. About twenty.

Q. Did you know any of them?

A. No.

Q. Were any of them operators or supervisors in your office?

A. Well, they wouldn't be. They weren't on strike, the people in my office. If they were, I would have been on the picket line, too.

• • • • •

229 Q. Now, in the operation of the Van Buren exchange, was it necessary to have supervisors, floor supervisors?

DARK P

A. Yes.

Q. Was it necessary to have floor supervisors at all times?

A. Yes.

• • • • •

241 IRENE KEUTHER, a witness called on behalf of the General Counsel, having been first duly sworn, was examined and testified as follows:

• • • • •

249 *Cross-Examination.*

• • • • •

253 Q. (By Mr. Robinson.) You say you had a replacement assignment at one time?

A. Well, that is you take the supervisors for their days off, relieve them on their days off.

Q. Is that a position which the new supervisors normally take as a replacement supervisor or when they are first promoted to supervisors?

A. Not in all cases, but under the circumstances, me being an experienced supervisor, I don't know what their reason may have been, but to my knowledge it might be that I would have more, it would be better because I would have more experience going in different sections and taking over, whereas student supervisors, they would put them in a steady section to get them acquainted.

• • • • •

259 **Trial Examiner Bennett:** Who was in your job when you came back?

The Witness: That is where Miss Jacobs came in. She had my time and my section when I came back.

Trial Examiner Bennett: I believe you stated she had been a replacement supervisor just before the strike, is that right?

The Witness: No, I had a steady section a couple of months before.

Trial Examiner Bennett: No, this Miss Jacobs.

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The Witness: No, she had a steady section. I think she was a seated supervisor at the time.

Trial Examiner Bennett: Before the strike?

The Witness: That is right, and then she took my section over, I presume, during the strike, and when I came back she was in my section.

Trial Examiner Bennett: Did she continue in your section?

The Witness: Yes, she did, until the next schedule.

• • • • •

265 FRANCES GAITTENS, a witness called on behalf of the General Counsel, having been first duly sworn, was examined and testified as follows:

266 *Direct Examination .*

• • • • •

267 Q. (By Mr. Licari.) Did you see anything else with the picket lines, did you see any signs?

A. Oh, yes, several girls were carrying signs. In 268 fact they were right in front of the door and all around there, and there was absolutely no sense in trying to get through there because you couldn't.

• • • • •

Q. Do you know what the signs said, what was on the signs? Did you read any of the signs?

A. It just said "Striking Union" on it. That is all it said, "Striking Union."

Q. Did it identify the union in any way?

A. Yes, it had ITTU on this sign, that is all.

Q. And you were a member of that union at that time?

A. Yes, sir, regardless, I wouldn't cross it anyway.

• • • • •

271 Q. Did he say anything else?

A. Well, I guess that kind of got me and I started crying, so my mother took the receiver away from me and told him, asked him if he would—

Q. Were you there when your mother talked?

DARK P

A. Yes, I was standing right alongside of her.
Q. Yes.
A. She took the receiver away and wanted to know
272 if he would pay my doctor bills if anything happened to me. He said it was no concern of theirs. So she told him not to call any more until after the strike was over, as long as the strike was on there.

* * * * *

277 *Cross-Examination.*

* * * * *

281 Q. (By Mr. Robinson.) Did you ever see the board at the Wentworth exchange when there was not some floor supervisor there actively working on the floor?
A. On Wentworth or Englewood?
Q. Well, Englewood. Let us change it to Englewood.
A. Yes, sir, I have.
Q. When was that?
A. When a supervisor failed to report for duty in the morning.
Q. How long would it exist?
A. About half a hour to an hour.

* * * * *

284 Q. Do you think the work you were doing as supervisor in that case was of any assistance in keeping the traffic in good condition?
A. Yes, sir, very much, sir.
Q. Do you think the job of supervisor is an important job in the telephone company?
A. I do.
Q. And was it a necessary job in the flow of traffic?
A. Yes, it was.

* * * * *

PAGE BLEEDTHRU

308 MRS. ROSE C. WINDER, a witness called by and on behalf of the General Counsel, having been first duly sworn, was examined and testified as follows:

Direct Examination.

* * * * *

310 Q. (By Mr. Licari.) Do you recall how many pickets there were?

A. Oh, maybe about seven or eight.

Q. Did they carry any signs?

A. Yes, a couple did.

Q. Did you read the signs?

A. Something about Ma Bell, they are awful sore at her, but I don't know what it was.

Q. Were there any names on the signs?

311 A. Ma Bell, but that is all I can remember. About wages, but I couldn't tell.

Q. Were there any names of unions on the signs?

A. I couldn't say offhand about that.

Q. You couldn't say?

A. No.

Q. Now, after you saw the picket line, what did you do?

A. I went home.

Q. Why did you go home?

A. Well, I wasn't going to cross the picket line.

* * * * *

312 Q. Did you ask her what she meant by that?

A. I said, "There are? Well, what kind of consequences will there be?" She said, "Well, there are just going to be consequences to pay." I said, "Will these consequences come from management?" And she said, "Well, no, you are going to be—you are unpopular with the girls because you are the only one out in the office and you are going to be very unpopular with them."

Q. Did she say anything else?

A. No.

* * * * *

317 Q. Well, after this conversation did you have any other conversation?

DARK P

A. Yes. I asked to talk to her again, and I asked for a transfer.

* * * * *

318 A. I told her I wanted to go downtown.

* * * * *

Q. Yes. Then you were transferred?
A. Yes, I was.

* * * * *

321 *Cross-Examination.*

* * * * *

328 Trial Examiner Bennett: Did you replace supervisors and operators, or just supervisors?

The Witness: Well, I would always come in on a supervisor's trick. That would be the schedule that she had for the day. They called them tricks.

Well, if they wanted to run the schedule out they would make me an operator for the day.

Trial Examiner Bennett: You said you were a replacement supervisor?

The Witness: That is right.

Trial Examiner Bennett: Does that generally mean you took the place of other supervisors who were absent?

The Witness: Yes.

* * * * *

389 LILLIAN F. JENSEN, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

* * * * *

391 Q. (By Mr. Licari.) How did you know it was the picket line of the Illinois Traffic Union?

* * * * *

A. Well, I knew it was the picket line, yes, of the Illinois Telephone Traffic Union.

PAGE BLEEDTHRU

Q. How did you know?

A. I assumed—they were the ones that were out—and I assumed it was their picket lines.

* * * * *

402 *Cross-Examination.*

Q. (By Mr. Robinson.) Miss Jensen, after April 7, 1947, when was the first time that you offered to return to work?

A. Well, after I was over my illness in September.

Q. Was that about September 9th or 10th?

A. It was on a Monday, I think.

Mr. Winks: The first Monday in September was September 8th.

Q. (By Mr. Robinson.) Did you go to work the first day that you offered to go to work?

A. Yes.

* * * * *

408 The Witness: * * * A good union member never crosses a picket line.

* * * * *

416 F. W. BRADEN, a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination.

* * * * *

419 Q. (By Mr. Winks.) Has the company been bargaining with the Illinois Telephone Traffic Union, or with Illinois Traffic Division 14 for many years?

A. They have.

* * * * *

424 Q. Did the Illinois Telephone Traffic Union and the
425 company enter into collective bargaining subsequent to January 31, 1947?

DARK PA

A. They did enter into collective bargaining. The first meeting after the receipt of this letter written January 31, 1947, was held February 21, 1947.

Q. Did bargaining continue thereafter?

A. Bargaining continued thereafter frequently until the termination of the strike on May 8.

Q. Now, what were the union's principal demands in the collective bargaining?

A. The union demanded a 30-cent an hour increase for each of the non-supervisory employees in their unit, various changes in hours and working conditions, including changes in vacation time, holiday time, and union shop.

Q. Now, did the company make any counter-offers to those demands?

A. They did.

Q. What were those offers?

A. The company repeatedly offered to reinstate or extend the contract or to arbitrate the wage issues in their demand.

Q. Were their offers still in effect after April 7, 1947?

A. They were.

* * * * *

427 Q. Now, with reference to these several written offers to extend or reinstate the contract and submit the wage question to arbitration, were any of those offers accepted by the union?

A. None of them were accepted by the union.

* * * * *

431 Q. Now, have the company and Illinois Traffic Division 14 entered into any agreements concerning union security?

A. They have.

* * * * *

Q. What were those agreements?

* * * * *

432 A. In May of 1948 the company and the union entered into an oral agreement and agreed to a consent election to be held under the direction of the National Labor Relations Board, and with the affirmative vote the company

PAGE BLEEDTHRU

would grant the maintenance of dues to the union. Such election was held and an affirmative was not received.

* * * * *

Mr. Winks: Mr. Examiner, the charge in the complaint is that this company has been discriminating against this union. We want to show there is no basis for that charge. It has been our consistent policy to be fair with the union.

Mr. Licari: That is a misstatement. We did not say they were discriminating against the union. We have stated that they are discriminating against eight individuals.

Trial Examiner Bennett: The aspects of the dis-
433 crimination as I construe them, refer to the treatment of these eight individuals, rather than a more general allegation.

* * * * *

438 Q. (By Mr. Winks.) Has the company had any policy with respect to encouraging or discouraging membership in the Illinois Telephone Traffic Union, or Illinois Traffic Division 14 of the Communications Workers of America?

* * * * *

A. They have such policy.

Q. What is that policy?

A. New employees, or any employees in the state area of that department, are informed that they may choose whether they belong to the CWA union or not belong to the CWA union, or any other union.

Q. And is that the company's policy, not merely for new employees, but for all its employees?

439 A. That is the company's policy for all employees.

* * * * *

Q. I show you a document which the reporter has marked as Respondent's Exhibit No. 8 for identification, and I will ask you to state what it is, if you know?

A. This is part of the syllabus prepared in connection for use in the induction of telephone operators, whether
440 they be newly employed or transferred into the state area of the traffic department.

This is used by the chief operator and other people in our organization.

* * * * *

448 Q. Mr. Braden, you testified at the close of the hearing yesterday that it was the company's policy that its employees might join the CWA, or not join the CWA or join any union of their choice, is that correct?

A. That is right.

Q. Is that the policy that is actually carried out?

* * * * *

A. That policy is carried out.

Q. What do you base that statement on?

A. It is part of my job to see that the company's personnel policies are carried out in the State Area Traffic Department. I am informed of each significant grievance that is presented in the field. I am also informed, and assist in the processing of grievances presented to my general traffic manager. Since the time I have been in my present job—that began in February, 1947—we have had no grievance alleging discrimination. A perusal of our files incident to this same problem shows that no such grievance has been filed previously.

449 Q. Do you find the union presents grievances on many different subjects?

A. They do present grievances on many different subjects.

Q. And do they present them vigorously?

A. Quite vigorously.

Q. Now, referring specifically to the strike called by the ITTU in April, 1947, about how many persons went on strike in the State area of the Traffic Department?

A. About 11,500.

Q. Were many of those employees active as pickets?

A. Many of them were active as pickets.

Q. Was any disciplinary action taken against any of those employees because of their activities in the strike?

* * * * *

PAGE BLEEDTHRU

450 A. There was no disciplinary action taken.

* * * * *

Q. Did the company know the identity of any of the officers, stewards, picket captains and other union officials and leaders of the ITTU at the time of the strike?

* * * * *

A. They knew the identity of these individuals.

Q. That is, many of them, is that correct?

A. Many of them, that is right.

Q. And are you referring now to employees of the company?

A. That is right.

* * * * *

Q. * * * Now, were any of the employees in the State Area of the Traffic Department replaced during their absence from work?

A. None of them were replaced.

Q. Why not?

451 A. We were operating with a very skeleton force. In fact, in many offices it would not have been possible to replace any one. We used no supervisors. Those people who were working were handling emergency traffic only. We could not begin to follow our usual good service standards, because it was impossible to replace any one.

Q. So during the strike the State Area of the Traffic Department just did not use any supervisors at all, is that correct?

A. That is right, none were used.

* * * * *

453 Q. Were Catherine Brophy, Edith Holmes, Lillian Jensen, Dorothy Jungbluth, Irene Keuther, Helen Macellaio, Frances Regan and Rose Winder ever officers or leaders of the Illinois Telephone Traffic Union, or of Illinois Traffic Division No. 14?

* * * * *

A. To my knowledge they were not.

* * * * *

Q. Mr. Braden, there has been considerable testimony

in this case about the meetings of the bargaining committee of the Illinois Telephone Traffic Union with company
454 representatives in March, April and May of 1947. Were you one of the company representatives present at bargaining meetings held in that period of time?

A. I was.

Q. Now, when the representatives of the Illinois Telephone Traffic Union discussed with you the question of the eight individuals involved in this case, did they say anything as of what date they wanted those eight reinstated?

A. In any discussions that I heard there was no question of a date of reinstatement, inasmuch as at that time the strike was still on.

Q. Did they ask that they be reinstated prior to the conclusion of the bargaining negotiations then in progress?

A. They did not.

Q. Was any agreement reached on wages and working conditions between the Illinois Telephone Traffic Union and the company in the month of April, 1947?

A. None was reached.

* * * * *

Cross-Examination.

Q. (By Mr. Licari.) Mr. Witness, you just testified that you knew of your own knowledge that the eight alleged discriminatees were not very active in the union or were
455 not leaders in the union. How do you know that?

A. Each year our union writes us a letter listing the names of the stewards in each office who have been duly selected and elected, and the names of the other officials of the union.

* * * * *

456 Q. (By Mr. Hackett.) Mr. Braden, you discussed yesterday the question of the company's favorable ac-
457 tions with this union, is that correct?

A. I consider we have very favorable relationships with the ITTU and CWA.

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PAGE BLEEDTHRU

464 Q. There were many arrests in the area during the strike arising over conditions which occurred on the picket line, isn't that correct?

A. I have heard of several.

• • • • •

465 GORDON ALLER, a witness called by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination.

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472 Q. (By Mr. Winks.) Now, did Respondent's Exhibit No. 9 then expire in accordance with its terms and the letter from the union?

A. No, it did not. The union was making a good many demands, and it took some time, and finally by April 25 it was evident that we were not going to get through before the contract would expire, and the union refused to extend the contract for any great length of time, but finally an agreement was reached to extend the contract to April 29.

Trial Examiner Bennett: When was that agreement entered into?

The Witness: That agreement was entered into on the 25th of March.

Mr. Winks: I think a little while ago you made some reference to the 25th of April. Which month is correct, March or April?

The Witness: Well, March is when we entered into the agreement.

• • • • •

475 Q. (By Mr. Winks.) Now, what happened with respect to collective bargaining between the Chicago Telephone Traffic Union and the company after Respondent's Exhibit No. 10 was executed?

A. Well, we continued to negotiate. We reached an agreement on some items, and on others had not, and on April 25 we agreed on an extension which was to extend the contract to June 2nd, 1947.

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DARK P

478 Q. Before we get into a discussion of these particular jobs involved in this case I will ask you to describe the overall task of the Chicago area of the company's traffic department.

A. Well, the Chicago area traffic department has the job of providing service here in the city, and there are 1,475,000 telephones installed in Chicago. That is around 130,000 more than were installed in April of 1947. These
479 phones give rise to around 6,600,000 calls a day, and it is the job of the traffic department in the Chicago area to employ and train and supervise an operating force adequate to give this service.

We not only handle local calls, but we handle calls to suburban points which extend around 40 miles from the city limits. Those calls have to be completed by operators working in state area offices.

Anyone who wants to make a long distance call that goes beyond the 40 mile limit, we connect the customer with long distance, which is located at 212 West Washington.

* * * * *

481 Mr. Winks: I don't think that Mr. Licari even yet realizes how important the floor supervisors' job is.

Mr. Licari: We will stipulate that it is a very important job.

Mr. Winks: We will accept that stipulation, too, but we want to make it clear on the record how important it is. It is not going to take very long, but we want to put it in.

* * * * *

482 Trial Examiner Bennett: I think the record should reveal that you have had marked for identification two volumes which are roughly the size of two medium sized telephone books.

* * * * *

485 Trial Examiner Bennett: They are both Central Office Training Material?

The Witness: That is right.

Trial Examiner Bennett: And one is a continuation of the other?

The Witness: That is correct, to tell how the operator is trained, and also there is a section, I believe it is in the second book, that tells how a supervisor is trained.

* * * * *

AGE BLEEDTHRU

488 Q. (By Mr. Winks.) Now, Mr. Aller why is such a complicated training procedure required for telephone operators?

489 A. Well, there are several reasons. In the first place, there is a great variety of situations that might confront the operator without any warning on her part, and while we talked of the "Local Operating Practice," which outlines the various types of operating conditions that may be encountered, it isn't practical for an operator to consult that book when she gets a particular call she doesn't understand. The book doesn't outline all the things, but covers pretty generally what the operators are expected to do. So it is really training that gets the operator familiar with the contents of the "Local Operating Practice," as applied to handling these calls.

Then there is—I think it has been mentioned before—that most calls require two and sometimes three operators for completion. That means team work is required between the operators or among the operators, and it is necessary that a regular standard way of handling calls be followed by all the operators.

Then, there is, too, the fact that parts of the operator's job are repeated millions of times a day and we study the best methods of completing calls, going through these motions, and when we finally decide on a particular way of handling it, we of course expect the operators will use that method.

• • • • •

491 Q. What other duties does the supervisor have in addition to the training and management of her section when she is acting as a floor supervisor?

A. She is in a position to help the operators out on emergency calls, where, for example, a customer comes up and is very excited and gives a call to the operator, "I
492 want the Fire Department," and then hangs up not giving what his number is or what his address is. That type of call is referred to the floor supervisor who, knowing what line it comes up on, finds out what the parties are on the line, if it is a party line, and calls back the various parties on the line until she finds the one who originated the emergency, and then she goes ahead and takes whatever

action is necessary. If the customer wants a doctor she may call a number of doctors until she finds one who can respond to the emergency. This whole process may take fifteen minutes or half an hour of the supervisor's time.

Q. Now, would you give one specific example of that sort of case?

A. We had a rather unusual case last year at Prospect office, where a mother came on the line and asked the "A" operator if she wouldn't reach a doctor for her, that she couldn't get her own family physician.

* * * * *

493 Well, she said that her baby was having convulsions and asked the operator to reach a doctor as her own family physician was not able to respond. The operator referred it to the supervisor and the supervisor tried to reach a doctor for this woman and I believe called nine doctors without getting one who could respond.

During the time she was calling the doctor she kept in touch with this woman and finally after the ninth one failed to respond, the woman told the supervisor that her baby was choking and the supervisor suggested that the pulmotor squad be summoned and the mother said she would like that and the pulmotor squad got there in two or three minutes and gave oxygen to the infant for several hours afterwards.

When the family physician arrived he said that had the pulmotor squad been delayed a few more minutes the child would have died.

* * * * *

495 Mr. Licari: We will stipulate that they are really important people, that they should be there at all times when they should be there, and that they are quite a cog in the telephone company's machine.

Mr. Robinson: We will accept that stipulation.

* * * * *

496 Q. (By Mr. Winks.) Is it necessary that the supervisory force have a high degree of flexibility?

A. Yes, it is desirable that they have a good deal of flexibility because they may be asked to fill in on any of these assignments, particularly the replacement.

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PAGE BLEEDTHRU

497 Q. Mr. Aller, I believe you said that the Chicago area traffic department handles about 6 million 6 hundred thousand calls in an ordinary week day. What portion of those calls are correctly handled?

A. 99 per cent are handled without error.

• • • • •

Q. Now, does the program of training and assignment of operators and supervisors which you have been describing have any close relationship to this 99 per cent figure?

A. Certainly, we couldn't give the service we do
498 in Chicago without it.

• • • • •

499 Trial Examiner Bennett: April 7th you were informed by whom?

The Witness: By Mr. FitzGerald and Mr. Wageck. I got reports from Mr. Hunter and Mr. Halliday.

500 Trial Examiner Bennett: What did they inform you?

The Witness: They told me of the numbers of people that had come to work, or had failed to come to work, and told me that they had replaced the supervisors that had failed to come to work. I knew the operators were not a particular problem because we were employing operators at that time, and the operators' assignments are not so very definite because there is a fairly high turnover on those employees.

503 Q. (By Mr. Winks.) What about the replacement of supervisors?

A. The supervisors, their places were filled and when they returned they were given work as an operator and they were not discriminated against in any way.

Q. Did they lose any seniority, vacation or pension rights by reason of their replacement?

A. No, they did not.

Q. Was the time which they were away during the strike counted as time in connection with their eligibility for pension, their rights to vacation and their seniority?

A. It was.

• • • • •

Q. Now, were the eight supervisors officers or leaders of the Illinois Traffic Union or Illinois Traffic Division 14 so far as you know?

A. So far as I know they were not.

Q. Has it ever made any difference to you whether an employee of the company was or was not a supporter of the Illinois Telephone Traffic Union or Illinois Traffic Division No. 14?

A. No, sir.

Q. Has that been the company's policy?

504 A. Yes, it has.

Q. Has that policy been actually carried out since long prior to April 7, 1947?

A. Yes, it has.

Q. Did the chief operators and assistant chief operators ever get any instructions on that point?

A. Yes, they do.

Q. Aside from this case have you ever received any complaint that the company was not following such a policy?

A. No, I have not.

• • • • •

520 ROBERT T. HALLIDAY was called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination.

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522 Q. (By Mr. Winks.) • • • how many PBX placement supervisors did you have?

523 A. Oh, we only had two PBX placement supervisors.

Q. Who was the other one?

A. Mrs. Bregenzer is her name now. I believe it was Florence Fortmann.

• • • • •

Q. Did you have enough such work to keep those two supervisors busy on a regular schedule?

PAGE BLEEDTHRU

A. Yes, we did. When you remember there are probably around maybe 15,000 regular PBX attendants in the city of Chicago, and a great many customers who look to the Telephone Company to help them get this technically trained help.

• • • • •

528 During the course of that conversation, which again in my opinion was very friendly, she indicated that she would like to go back to Chicago toll, that she thought her relations over there would be better.

Q. (By Mr. Winks.) Did you make any response to that?

A. Yes, I did.

Q. What was that?

A. I told her, of course, that I had no jurisdiction over Chicago toll, but that I would call the division toll superintendent and see if such a transfer could be made, inasmuch as that is the office from which we got her.

Q. Now, did Mrs. Jungbluth express any dissatisfaction with the management of the PBX Division at that time?

A. None at all.

Q. What did you do about this transfer?

529 A. Why, as I said before, I believe that was a Wednesday, and I think it was several days before I was able to get hold of Mr. Kaatz and get a reply from him as to whether he would take her. Of course, she did—

Q. Who is Mr. Kaatz?

A. He is the division toll superintendent in charge of the toll offices where Mrs. Jungbluth worked. He indicated that—

Q. Do you recall when you did reach Mr. Kaatz?

A. Why I believe it was on a Friday.

Q. Was that in the same week or a different week?

A. That was the same week, that was two days later.

Q. Incidentally, I believe you said you had some difficulty reaching Mr. Kaatz, is that right?

A. Yes, that is right.

Q. I believe there is previous testimony that his office was on strike, is that right?

A. That is right.

Q. All right.

A. She had, of course, said would she go back to Chicago toll as supervisor, and, of course, I said that was not within my jurisdiction, but I would be very glad to find out and let her know.

So I talked to Mr. Kaatz and he indicated that they would not be able to take her back as a supervisor, that they had no vacant authorizations, but that they
530 would be very glad to take her back as an operator, that she had done a good job for them, and they saw no reason why she could not continue to do so.

• • • • •

532 Q. Did Mrs. Jungbluth ever object at any time to the transfer, so far as you know?

533 A. No, sir, she did not.

Q. Now, has it ever made any difference to you whether an employee of your division was or was not a supporter or a member of the Illinois Telephone Traffic Union or Illinois Traffic Division 14?

A. No. As a matter of fact, we have no way of knowing whether they are a member of a union or not a member of a union.

Q. Do you care?

A. No, sir.

Q. Is that policy carried out throughout your division?

A. So far as I know it was, and it still is.

Q. Well, you would have a pretty good idea with respect to your division, wouldn't you?

A. Yes, I am sure I would.

Q. Now have you ever received any complaint that your division was not following such policy, except as this particular charge represents such a complaint?

A. No, no, we have not.

Q. Insofar as you have observed, has that policy been carried out in the rest of the company since long prior to April 7, 1947?

A. To the best of my knowledge it has.

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PAGE BLEEDTHRU

Cross-Examination.

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534 Q. (By Mr. Licari.) When did you have your first conversation with Mrs. Jungbluth?

A. As I recall it, it was Wednesday, April 9th.

Q. I see. And will you tell us again the tenor of that conversation?

• • • • •

A. The purpose of my call was to get her to come back to work, to let her know that the work in that particular section was going on in a normal manner, and that we needed her.

I also explained that we had placed Miss Letour-
535 neau in there on a temporary basis, and that if she failed to, or if she did not come in to work, or if she still persisted in not coming to work, we would have to replace her on a permanent basis.

Then she indicated, in the course of our conversation, she indicated that maybe it would be better for her to return to Chicago toll, because she thought that her relations over there would be better than they were in the PBX placement job.

Q. When you called her you knew the reasons why she had not been to work?

A. Oh, yes.

Q. You knew it was because she did not care to cross the picket line?

A. She had already told us that.

Q. When you asked her to return to work, did you ask her to return as a supervisor?

A. No, we asked her to come back as a PBX placement—

Q. As an operator?

A. Oh, no, I asked her to come back in her PBX placement job.

Q. Was that her former job?

A. That is right.

Q. The job she held prior to April 7, 1947?

A. That is right.

Trial Examiner Bennett: And this was on Wednesday the 9th that you asked her that?

536 The Witness: That is right. Yes. I wanted her to come back on the job she held before the strike.

544 *Redirect Examination.*

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546 Q. (By Mr. Winks.) She wanted to go to Chicago Toll?

A. That is right.

Q. That is the impression you got from these conversations?

A. She very definitely indicated that she would like to go back to Chicago Toll, and I considered nothing else other than that.

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576 N. R. HARRISON, JR., called as a witness by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

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580 Q. (By Mr. Robinson.) How many supervisors did you have in this exchange in which Miss Jensen and Mrs. Gaittens were working in 1947?

A. We had 19.

Q. And of that 19 were part of them assigned to floor supervisor work and part of them to seated supervisor?

A. That is right.

Q. And did some of them have a replacement supervisor's assignment?

A. That is right.

• • • • •

591 Q. Were all the individuals whom you have men-
592 tioned as having been promoted to supervisor regular employees of the company with substantial periods of service?

AGE BLEEDTHRU

A. Yes, they were the employees that under any circumstances we would have next promoted to the position of supervisor.

• • • • •

619 R. E. WADE, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

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622 A. There are the regular supervisors, who have regular assignments throughout the week, and then there are the replacement, the day off replacement supervisors, who also have assignments to replace the first girl on her day off, and there is a third group known as incidental absence replacement supervisors.

Q. (By Mr. Winks.) And what is their function, the third group?

A. The third group takes care of unforeseen absences in the group.

Trial Examiner Bennett: They are indicated on the payroll as supervisors?

The Witness: Yes.

Q. (By Mr. Winks.) That last group to which you have referred have a definite time to report?

A. They do. They have a regular time to report.

Q. And if no one is absent, no supervisor is absent, what do those supervisors do?

A. They take a position and do regular work.

Q. Regular operating work?

A. Regular operating work.

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631 *Cross-Examination.*

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634 Q. (By Mr. Licari.) There was a vacancy when Miss Holmes did not return, is that correct?

A. Yes.

Q. And on April 27th you appointed Miss Radestock and Rosemary Wertz?

A. Yes, sir.

Q. As the new supervisors?

A. Yes, sir.

Q. To cover that vacancy?

A. No, sir. We also had to prepare for the vacation season which was approaching.

Q. Yes, but you knew at that time that Mrs. Holmes was not going to return as a supervisor?

A. On the 27th, yes.

• • • • •

637 Q. How many regular supervisors have you got in that office?

Mr. Robinson: When?

Mr. Licari: In 1947, on or about April 7th, 1947, and thereafter.

The Witness: About 25.

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R. C. LEETZ, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

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654 Trial Examiner Bennett: You say Miss McGinty was a replacement supervisor?

The Witness: That is right.

Trial Examiner Bennett: Not a regular supervisor?

655 The Witness: Yes, they are all regular supervisors, day-off replacement supervisor, incidental absentee replacement supervisor.

Trial Examiner Bennett: That is what I mean. Miss McGinty was in that Category 2?

The Witness: That is right.

Trial Examiner Bennett: What time did she change from Category 2 to another category, if at all?

The Witness: Well, we use those girls interchangeably

GE BLEEDTHRU

as far as day-off replacement. A lot depends upon the season of the year.

Trial Examiner Bennett: Do I understand that on the April 13th and April 20th weeks she was still considered a replacement supervisor?

The Witness: No, I would not consider her a replacement supervisor at that time in view of the fact that that tour was definitely assigned to her week by week on our weekly assignment sheet.

Trial Examiner Bennett: As I understand it from April 13th on you would no longer consider her a replacement supervisor?

The Witness: No, we wouldn't because she had this regular "B" board section to cover in the Austin office.

Q. (By Mr. Robinson.) As a matter of fact, Mr. Leetz, the supervisors assigned to a particular trick number, the
656 supervisors assigned to replacement supervision, whether it be absentee or day-off, are all regular supervisors in the normal use of the word, are they not?

A. That is correct. They make up the supervisory team or the supervisory complement in the office.

Q. And they may be shifted from one job to the other depending upon a dozen different reasons during the course of any particular week?

A. That is right.

• • • • •

665 *Cross-Examination.*

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672 Q. (By Mr. Licari.) April 7th was a very important date with respect to the company's operation, was it not?

A. Every day is an important day so far as the company is concerned.

Q. On that day there was a strike?

A. That is correct.

Q. And, of course, as company's counsel claims the operation was, to a certain extent, crippled, isn't that correct?

DARK PA

A. Not so far as Chicago traffic was concerned.
Q. Oh, they were normal?
A. Fairly so. We continued to give service.
Q. Normal service?
A. Yes, sir.

• • • • •

690 Q. (By Mr. Hackett.) What office did Miss Brophy work in during April of 1947?
A. The Austin office.
Q. How many supervisors did you have at the Austin office?
A. Around twenty-two, as I recall.
Q. Did that include the regular supervisors, the replacement supervisors and the incidental absent replacement supervisors?
A. That is correct.
Q. Will you break those twenty-two down to those three categories, please?

• • • • •

691 The Witness: We probably had out of that twenty-two in the neighborhood of seven or eight replacement supervisors, both for day off replacement and incidental absences.

• • • • •

Q. In what office did Mrs. Winder work, or what office was she assigned to?
A. She worked in the Mansfield office.
Q. How many supervisors were there in the Mansfield office in the neighborhood of 1947?
A. Approximately twenty-six or twenty-seven.
Q. How many of those were in category 2 of replacement supervisors?
A. Probably ten or twelve.

• • • • •

692 Q. Where did Miss Keuther work?
A. In the Van Buren office.
Q. How many supervisors were there in the Van Buren office?
A. The Van Buren office would have in the neighborhood of twenty-one.

GE BLEEDTHRU

Q. Were there any replacement supervisors?
A. Seven or eight.
Q. And where was Miss Macellaio?
A. The same place, the Van Buren office.

* * * * *

714 *Redirect Examination.*

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716 Q. (By Mr. Robinson.) As a matter of fact, the people in this pool of supervisors are shifted from one category to the other, according to the requirements of the office, are they not?
A. That is right.
Q. And it is a flexible arrangement which is changed
717 according to the requirements of the office, are they not?
A. That is right.

* * * * *

731 HENRY E. WAGECK, called as a witness on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Winks.) Will you state your name? And business address, please?
A. Henry E. Wageck. W-a-g-e-c-k, 6317 South Maryland.
Q. By whom are you employed?
A. The Illinois Bell Telephone Company.

* * * * *

732 Trial Examiner Bennett: What did you say your present title is?
The Witness: Division Traffic Superintendent.

* * * * *

Q. (By Mr. Winks.) Now, among other districts, was the district in which the Englewood office is a part under your supervision?

DARK PAG

A. Yes, sir, that is the Wentworth-Oakland District.

Q. And who was the District Superintendent of that district in April and May of 1947?

A. Mr. N. R. Harrison, Jr.

Q. Did he report to you?

A. Yes, sir.

• • • • •

733 Q. Did you say anything to him about filling those
734 jobs, replacing those absentees?

A. No, I did not.

Q. Why didn't you mention that?

A. That is part of Mr. Harrison's responsibility, to fill the positions when they are absent, from the replacement force. He takes care of that.

• • • • •

739 Q. Did you ever at any time give any instructions to Mr. Harrison with respect to the replacement of Mrs. Gaittens or Miss Jensen?

A. No, I did not. That is his responsibility to replace them.

• • • • •

Q. Now, did you ever at any time receive any instructions from Mr. Aller with respect to the replacement of Mrs. Gaittens or Miss Jensen?

A. No, I did not.

Q. Do you know whether or not those two individuals had been replaced on April 11, 1947?

A. Mr. Harrison informed me they had been, yes.

Q. Was that replacement permanent or temporary?

A. It was the same as any other replacement, as permanent as any other replacement we make.

• • • • •

740 *Cross-Examination.*

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743 The Witness: Well, I don't know what Mr. Aller had in mind but those replacements as far as I was concerned were permanent the first day they were made.

Trial Examiner Bennett: Which replacement?

AGE BLEEDTHRU

The Witness: The replacement of these supervisors.

Trial Examiner Bennett: And when did you make them?

The Witness: The first day of absence, in the replacement force.

Q. (By Mr. Licari.) What kind of replacements were they?

A. Supervisory replacements.

Q. What is that?

A. Supervisory replacement.

Q. With whom did you replace them?

A. That I do not know the names. We replaced them from the supervisory force, replacement supervisory force.

Q. Did you confer with Mr. Aller with respect to the replacements?

A. Mr. Aller?

Q. Yes.

744 A. I did not.

* * * * *

GEORGE W. FITZGERALD, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Winks.) Will you state your name and business address?

A. George W. FitzGerald, 5643 North Broadway.

Q. Is that in Chicago?

A. Chicago, Illinois.

Q. By whom are you employed, Mr. FitzGerald?

A. Illinois Bell Telephone Company.

* * * * *

Q. What has been your experience with the company?

A. I have had various assignments in the traffic department. The last six years I have been division

745 traffic superintendent, North Division.

* * * * *

Q. In April and May of 1947 were the Austin-Kedzie and Edgewater-Rogers Park districts under your supervision?

A. They were.

Q. And who was in charge of those districts under your supervision?

A. Mr. R. C. Leetz was in charge of the Austin-Kedzie district, and Mr. R. E. Wade was in charge of the Edgewater-Rogers Park district.

• • • • •

746 Q. Did you say anything to Mr. Leetz about filling those jobs?

A. No, I did not. I assumed he would fill them because that is the normal function of his job, to run the district.

Q. Did Mr. Aller, when you talked with him, say anything to you about filling the jobs?

A. No, he did not.

• • • • •

750 Q. Did you ever at any time give any instructions to Mr. Wade or Mr. Leetz with respect to the replacement of any of the four individuals to whom letters were sent?

A. No, I did not.

Q. Did Mr. Aller at any time ever give you any instructions with respect to the replacement of those four individuals?

A. No, he did not.

751 Q. Now, had those four individuals been replaced on April 11, 1947?

A. To the best of my knowledge they had been, yes.

Q. How do you know that?

A. I was told by the district men that they had replaced them.

Q. Were those replacements permanent or temporary?

A. They were just regular replacements. They were permanent as far as I am concerned.

• • • • •

753 *Cross-Examination.*

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Q. (By Mr. Licari.) I direct your attention to pages 507 and 508 of the transcript. W[illegible] you read it?

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AGE BLEEDTHRU

Q. What do you say to that testimony, Mr. Witness?

A. Well, I consider that they were permanently replaced before Mr. Aller said so. I don't know what he had in mind.

Q. You receive your instructions from Mr. Aller, don't you?

A. No, sir, not on that.

Q. You consult with him on personnel matters, don't you?

754 A. That is not a personnel matter in my opinion.

Q. You mean you don't think a change in personnel duties is a personnel matter?

A. The selection of particular people, how many and when is not a personnel matter as related to Mr. Aller.

* * * * *

RESPONDENT'S EXHIBIT NO. 1.

• • • • •

May 2, 1947

Mrs. Dillas:

I will arrange to transfer to any State Area Traffic Office any of the 9 employees recently demoted from Supervisor and P.B.X. Placement Supervisor who may request such transfer. Such transfer shall be without prejudice or loss of seniority to any such employee.

In the State Area each of these employees will be given the opportunity to be promoted to the first opening as a supervisor for which she is qualified. For a girl never before in a toll office this would be at least 60 days from the date of transfer.

A. F. Stephenson.

RESPONDENT'S EXHIBIT NO. 8.

• • • • •

Section 3
Page 4

Induction of Telephone Operators

The Union

First Week

By C. O.

As your training and experience progress, various subjects related to your job and your Company will become of more interest to you.

During training, M..... ....., the instructor, will discuss some of these matters with you. Later M..... ....., the assistant chief operator, will continue the discussion of additional subjects from time to time.

One of the first items along this line is that of the "Union."

We can discuss that now.

The Telephone Company management sincerely believes in the principle of collective bargaining. It recognizes

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that employees, if they so desire, are entitled to deal with the Company through their own freely chosen representatives.

For many years the Company has dealt collectively with the employees through their organization. At present, the operators, supervisors and clerks of the State Area Traffic Department are represented by the Illinois Traffic Division 14, Communications Workers of America. Miss .... is the Union Representative in this office.

The Union and the Company bargain together periodically on wages and working conditions and set down the matters agreed upon in a contract.

A copy of the present contract is available at my desk for reference or study.

October 1948.

RESPONDENT'S EXHIBIT 22.

AGREEMENT.

This Agreement, made and entered into this 21st day of December, 1945, by and between the Illinois Telephone Traffic Union (N. F. T. W.), hereinafter called the "Union," and the Illinois Bell Telephone Company, hereinafter called the "Company":

Witnesseth:

Whereas, the Union does hereby certify that it has of this date not less than sixty-seven hundred (6,700) members in good standing, who are non-supervisory employees of the Traffic Department, State Area, of the Company, and the Company agrees that this number constitutes a majority of the non-supervisory employees, Traffic Department, State Area; and

Whereas, the Company recognizes the Union as the sole collective bargaining agent for all of its non-supervisory employees in the Traffic Department, State Area;

DARK PA

Now, therefore, in consideration of the mutual covenants and promises herein contained, the parties agree hereto as follows:

* * * * *

Article XXIII.

Duration of Agreement.

23.01. This Agreement is for the period commencing May 9, 1945, and ending May 9, 1946, and shall continue in full force and effect after such period of time unless terminated by thirty-day notice in writing from either of the parties hereto to the other.

In Witness Whereof, the parties hereto have caused this Agreement to be executed in duplicate by their officers thereunto duly authorized, all on the day and year first above written.

Illinois Telephone Traffic Union (N. F. T. W.),
By Anne C. Benscoter,
President.
By Hazel Richards,
Acting Vice President.

Illinois Bell Telephone Company,
By A. F. Stephenson,
General Traffic Manager.

(Amendments of January 14, 1946, January 18, 1946, March 20, 1946, and May 16, 1946 omitted in printing.)

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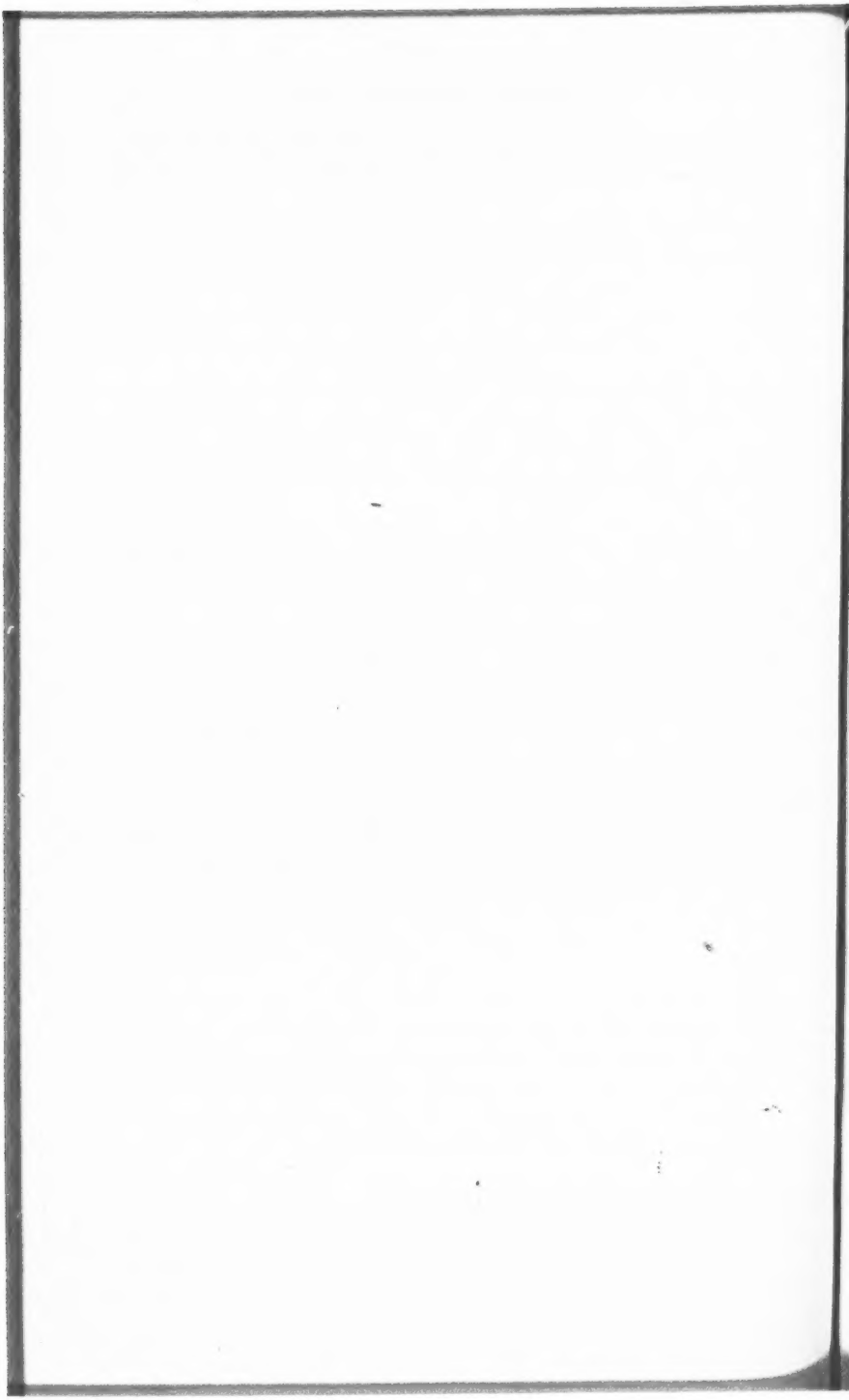

DARK PA

At a regular term of the United States Court of Appeals for the Seventh Circuit, held in the City of Chicago and begun on the third day of October, in the year of our Lord one thousand nine hundred and fifty, and of our Independence the one hundred and seventy-fifth:

No. 10305

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

ILLINOIS BELL TELEPHONE COMPANY, RESPONDENT

Petition for Enforcement of Order of the National Labor Relations Board

And afterward, to-wit, on the twenty-third day of April, 1951, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

CHICAGO 10, ILLINOIS

Monday, April 23, 1951

Before HON. J. EARL MAJOR, *Chief Judge;* HON. OTTO KERNER, *Circuit Judge;* HON. H. NATHAN SWAIM, *Circuit Judge*

No. 10305

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

ILLINOIS BELL TELEPHONE COMPANY, RESPONDENT

Petition for Enforcement of Order of the National Labor Relations Board

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel and on oral argument by *Mr. Robert Ackerberg,* counsel for the Petitioner and by *Mr. George M. Winks,* counsel for the Respondent, and the Court takes this matter under advisement.

And afterward, to-wit, on the twenty-first day of May, 1951, there was filed in the office of the Clerk of this Court the opinion of the

AGE BLEEDTHRU

Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1950, APRIL SESSION, 1951

No. 10305

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

ILLINOIS BELL TELEPHONE COMPANY, RESPONDENT

Petition for Enforcement of an Order of The National Labor Relations Board

Heard April 23, 1951. Decided May 21, 1951

Before MAJOR, *Chief Judge*, KERNER and SWAIM, *Circuit Judges*

MAJOR, *Chief Judge:*

This is a petition by National Labor Relations Board (hereinafter called the Board) for enforcement of its order issued against respondent, Illinois Bell Telephone Company, on March 16, 1950, following the usual proceedings in such cases. Respondent denies the validity of the order and requests that enforcement be denied.

The case has to do with the demotion by respondent of eight supervisory employees [1] because of certain activities under circumstances hereinafter set forth. The Board concluded that such employees were engaged in a concerted activity protected by § 7 of the Act and that respondent's action violated § 8 (1) of the Act, and "because such a demotion amounts to a discrimination in hire and tenure of employment and thereby discourages membership in a labor organization it also violates Section 8 (a) (3) of the Act."

The issues for decision are in the main legal in their nature because there is little, if any, dispute in the evidentiary facts. To bring such issues into focus, however, it appears necessary to make a rather detailed statement of the facts. Respondent, an Illinois corporation with its principal office in Chicago, Illinois, is engaged in the com-

[1] The employees demoted were Frances Regan, Lillian Jensen, Edith Holmes, Irene Keuther, Helen Marcellaio, Rose Winder, Catherine Brophy and Dorothy Jungbluth. Whether they were supervisory employees within the contemplation of the Act is open to question. The Board takes the position, under the circumstances of the case, that it is immaterial, and we shall do likewise.

munications industry, rendering telephone service both within and without the State of Illinois. The unions involved in the proceeding, directly or indirectly, are Illinois Telephone Traffic Union (called I.T.T.U.) and Chicago Telephone Traffic Union (called C.T.T.U.). The membership in the former in the main consisted of those employed in the State outside of the boundaries of Chicago; the latter represented those employed within the City of Chicago. The former, as the duly designated bargaining agent for the employees in the State area, had a contract with respondent which expired on or about March 1, 1947. On April 7, 1947, that union commenced an economic strike against respondent to obtain changes in working conditions, as well as a wage increase. Picket lines were set up at respondent's installations throughout the State area, and also at all exchanges within the Chicago area, on the morning of April 7. The strike lasted through May 8, 1947, and picket lines were maintained at all central office exchanges within the Chicago area until that time.

The C.T.T.U. was the duly designated bargaining agent for respondent's employees in the Chicago area, including those involved in this proceeding. This union also had a contract with respondent, entered into on July 25, 1946, which expired March 29, 1947. On March 25, 1947, C.T.T.U. and respondent signed an "Extension Agreement" extending the old agreement until April 28, 1947. Another "Extension Agreement" was entered into on April 25, 1947, extending the old agreement to June 2, 1947, and a new contract was signed on May 15, 1947. As the Trial Examiner stated, "C.T.T.U. did not engage officially or unofficially in the strike commenced by I.T.T.U. on April 7, 1947 but, as appears above, it met with Respondent during the strike period and ultimately signed a new contract on May 15." The record does not disclose the number of respondent's employees who were members of these respective unions; however, the contract entered into between respondent and C.T.T.U. in July, 1946, recites that not less than 6,000 employees were members of that union in good standing. It appears that some of the involved employees held membership in both unions at the time of the strike. Seven were members of the striking union, three were members of C.T.T.U., and one was not a member of either; however, as stated, all eight employees were in the bargaining unit represented by C.T.T.U.

As noted, I.T.T.U. commenced an economic strike against respondent on April 7, 1947, and established picket lines not only at respondent's installations throughout the State area but also at respondent's installations throughout the Chicago area represented by C.T.T.U., and also as noted, C.T.T.U. did not participate in any way in the strike. At that time, it was engaged in bargaining with

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respondent for a new contract. On April 8, the eight employees involved, without any previous notice or warning to respondent, failed to report for work because of their refusal to cross the picket line of the striking union. Subsequently, respondent, upon inquiry, was told by the employees that this was the reason for their refusal to work. As witnesses before the Trial Examiner, they testified to the same effect. Typical of such testimony is that of Miss Jungbluth, "I didn't want to come in because there was a picket line and I didn't believe in crossing the picket line"; Miss Marcellaio, "I saw the picket line and I went home"; Miss Keuther, "As a union member and also as an American citizen, I said, I feel it is my duty to respect a picket line." Miss Holmes did not approach the picket line but by telephone from her home learned that there were pickets in front of the office and refused to come to work "until after the pickets have been removed."

On April 11 and 12, 1947, respondent directed a letter to each of the involved employees in which they were told that their jobs would be placed in jeopardy by a continued absence from work, that they were being demoted from their authority as supervisor to that of operator, and that their employment would be suspended as of the first day they failed to report for the new assignment. Respondent during the time of the absence of these employees arranged to have their work performed by utilizing its replacement supervisors, by recalling regular supervisors who were off duty, and in general by reallocating the work of its force of telephone supervisors. At the termination of the I.T.T.U. strike on May 8, 1947, the pickets were removed. The following day, or shortly thereafter, the demoted employees reported for work and each was assigned to the position and duties of a telephone operator. The salary paid an operator was lower than than received by a supervisor.

It was the demotion of these eight employees by respondent which the Board found to be a violation of §§ 8 (1) and 8 (3) of the Act. On this premise the Board's order requires the respondent to cease and desist from discouraging membership in Illinois Traffic Division 14, C.W.A. (successor of I.T.T.U.) or any other labor organization of its employees, by discriminating in their employment and in any like or related manner from coercing its employees of the right guaranteed by § 7 of the Act. And respondent was required to offer the eight employees reinstatement to their former positions as telephone supervisors, to make them whole for any loss in wages, pension rights or sick benefits which they suffered as a result of their demotions, and to post appropriate notices.

The crucial issue, as we view the situation, is whether the eight employees were protected by § 7 of the Act. If so, the finding of an

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unfair labor practice and the order resulting therefrom is sustainable; otherwise, not. That section provides (29 U.S.C.A. § 157):

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

It is the Board's theory that the eight employees were engaged in "concerted activities" for their "mutual aid or protection." The Board terms the activities of the eight employees a "strike," while respondent labels it as a "wildcat strike." In our view, it was not a strike in any ordinary connotation of that term. This court, in *Conn* v. *N.L.R.B.*, 108 F. 2d 390, 397, accepted the definition of a strike as contained in American and English Encyclopedia of Law, Volume 24, page 123, as follows:

> "The term 'strike' is applied commonly to a combined effort on the part of a body of workmen employed by the same master to enforce a demand for higher wages, shorter hours, or some other concession, by stopping work in a body at a pre-arranged time, and refusing to resume work until the demanded concession shall have been granted."

While the Labor Management Relations Act of 1947 is inapplicable because the events in controversy took place prior to its enactment, it is interesting to note that § 142 provides:

> "The term 'strike' includes any strike or other concerted stoppage of work by employees * * * and any concerted slowdown or other concerted interruption of operations by employees."

There is no evidence that these eight employees acted in combination or concert. They did not converse with each other or any other person regarding the activity in which they engaged, that is, a refusal to cross the picket line. The record discloses unmistakably that each acted in her own individual capacity. The Board in its brief states, "Their only concern was to help the I.T.T.U." Even that concession is the result only of a dubious inference. None of the involved employees testified to any such concern. Their testimony discloses that their refusal to cross the picket line was a matter of principle, and that it would have made no difference whether the picket line was maintained by I.T.T.U. or some other union. The Board in its brief states that these employees "had no grievance which could have been adjusted through grievance procedures. The object behind their refusal to cross the picket line was merely to support the grievance of others." And at another point

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the Board states, "Here, there was no controversy between respondent and the C.T.T.U.; the complainants merely refused to cross the I.T.T.U. picket lines to support the demands of the I.T.T.U. rather than their own grievances."

Assuming, however, contrary to what we think, that the involved employees engaged in "concerted activities," we are unable to discern from this record, and particularly in view of the concessions made by the Board, how it can be held that such activities were for their "mutual aid or protection." They neither sought nor were entitled to seek on their own behalf any aid or protection from respondent. That was the sole function of C.T.T.U., the duly selected and existing bargaining representative for the unit of which the involved employees were a part. The Board in its brief concedes, "These agreements [those between respondent and C.T.T.U.] bound the employees to work in conformity with the wages, hours, and working conditions provided in them. Employees dissatisfied, for example, with their wages were not entitled to seek to revise them by strike action before the expiration of their agreements." In other words, these employees were without right to bargain with respondent or to strike because of any grievance which they had or for their own aid or protection, but they had such a right, according to the Board, in behalf of employees of a different unit and represented by a different bargaining agent.

So far as we are aware, no court has passed upon the precise question here involved; however, there are numerous cases where it has been held under a variety of circumstances that concerted activities by a group of employees were not protected by § 7 of the Act. *Southern Steamship Co.* v. *NLRB*, 316 U.S. 31, 46; *NLRB* v. *Sands Mfg. Co.*, 306 U.S. 332, 344; *NLRB* v. *Reynolds International Pen Co.*, 162 F. 2d 680, 683; *NLRB* v. *Draper Corp.*, 145 F. 2d 199, 202; *Joanna Cotton Mills Co.* v. *NLRB*, 176 F. 2d 749, 752.

No good purpose could be served in a detailed analysis of these and other cases which could be cited. The case most nearly in point is that of *NLRB* v. *Draper Corp.*, 145 F. 2d 199. There, as here, the company was bargaining with a union as a representative of its own employees. While so engaged, a number of the employees ceased work in what is referred to as a "wildcat strike." The discharge of such employees was found by the Board to be an unfair labor practice, but the court denied enforcement of its order. The Board before that court argued, as it does here, that the employees who went on strike were engaged in concerted activities for their "mutual aid or protection." The court in denying such contention stated (page 202):

> "* * * we are of opinion that the 'wild cat' strike in which the employees were engaged and for which they were discharged was not such a concerted activity as falls within the protection

> of section 7 of the National Labor Relations Act, but a strike in violation of the purposes of the act by a minority group of employees in an effort to interfere with the collective bargaining by the duly authorized bargaining agent selected by all the employees. The purpose of the act was not to guarantee to employees the right to do as they please but to guarantee to them the right of collective bargaining for the purpose of preserving industrial peace."

And on the following page:

> "Even though the majority of the employees in an industry may have selected their bargaining agent and the agent may have been recognized by the employer, there can be no effective bargaining if small groups of employees are at liberty to ignore the bargaining agency thus set up, take particular matters into their own hands and deal independently with the employer. The whole purpose of the act is to give to the employees as a whole, through action of a majority, the right to bargain with the employer with respect to such matters as wages, hours and conditions of work."

In distinguishing the *Draper* case, the Board states: "In this case, the concerted activity engaged in bore no relationship to the then current bargaining negotiations between the C.T.T.U. and respondent." We think that is a questionable statement. It may be that the activities had no appreciable effect upon bargaining negotiations then in progress but, if so, it was only because of the small number of employees who were participants (1%, so it is stated in respondent's brief). But suppose it had been 10% or 50%, of those in the bargaining unit represented by C.T.T.U. Under such circumstances, could it be held that cessation of work by such a large proportion of members of the unit would not seriously interfere with the prerogatives which the Act confers upon the agent selected to represent it? Not only would the authority of the bargaining agent be impaired under such circumstances, but any contract entered into would be of little value. Such activities by a large group would clearly be in derogation of the authority of the bargaining agent and would not be protected by § 7. And we discern no reason why a small group of employees (eight, in the instant case) would be entitled to the protection of the Act for activities which, if indulged in by a larger group, would be unprotected.

In *J. I. Case Co.* v. *NLRB*, 321 U.S. 332, 339, the court made the following pertinent observations:

> "The workman is free, if he values his own bargaining position more than that of the group, to vote against representation; but the majority rules, and if it collectivizes the employment bar-

gain, individual advantages or favors will generally in practice go in as a contribution to the collective result."

The Trial Examiner in his findings, referring to the refusal of the involved employees to cross the picket line, stated, "By so doing these eight employees placed themselves in the position of sympathy strikers who made common cause with those engaged in the economic strike against their common employer. As a result, their legal status became identically that of the striking employees of the ITTU State unit, namely economic strikers." We think it is a novel theory that the mere refusal to cross a picket line, in the absence of any other activity, makes the one who refuses a party to the strike, but even so, as already shown, such refusal was not for the "mutual aid or protection" of the employees involved. It could have only been for the benefit and aid of those in a different bargaining unit, the representative of which could not have represented the involved employees and, consequently, could have obtained nothing from respondent for their benefit.

The unreasonableness of the Board's decision is emphasized by its order wherein respondent is directed to cease and desist from "interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Illinois Traffic Division 14, Communications Workers of America, successor of Illinois Telephone Traffic Union, N.F.T.W., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities * * *."

Other than the incidents which we have discussed, there is not a scintilla of proof that respondent interfered in any form or manner with the right of its employees to join a labor organization of their own choice, or that it refused to bargain collectively with the agents selected by such employees. In fact, the record indisputably demonstrates that respondent bargained with C.T.T.U. in good faith, with a resultant contract, and it also bargained with the striking union, with a like result. There is no evidence of any hostility or favoritism on behalf of respondent against or for any union. Aside from what we have heretofore said, the Board is not entitled to enforcement of the broad, sweeping terms of the order presented. Cf. *Interlake Iron Corp.* v. *NLRB*, 131 F. 2d 129, 134; *Western Cartridge Co.* v. *NLRB*, 139 F. 2d 855, 858.

The petition for enforcement of the Board's order is denied.

A True Copy:

Teste:

____ ____,

Clerk of the United States Court of Appeals for the Seventh Circuit.

And on the same day, to-wit, on the twenty-first day of May, 1951, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
CHICAGO 10, ILLINOIS

Monday, May 21, 1951

Before HON. J. EARL MAJOR, *Chief Judge;* HON. OTTO KERNER, *Circuit Judge;* HON. H. NATHAN SWAIM, *Circuit Judge*

No. 10305

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

ILLINOIS BELL TELEPHONE COMPANY, RESPONDENT

Petition for Enforcement of an Order of The National Labor Relations Board

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the petition for enforcement of the order of the National Labor Relations Board, entered in this cause on March 16, 1950, be, and the same is hereby, denied.

And afterward, to-wit, on the seventh day of August, 1951, the following further proceedings were had and entered of record, to-wit:

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
CHICAGO 10, ILLINOIS

Tuesday, August 7, 1951

Before HON. OTTO KERNER, *Circuit Judge*

No. 10305

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

ILLINOIS BELL TELEPHONE COMPANY, RESPONDENT

Petition for Enforcement of an Order of The National Labor Relations Board

On application of counsel for Petitioner, it is ordered that the certified transcript of record of proceedings before the National

Labor Relations Board be certified and transmitted to the Supreme Court of the United States.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
CHICAGO 10, ILLINOIS

I, KENNETH J. CARRICK, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages contain a true copy of the order taking the cause under advisement, the opinion of the Court, the judgment of the Court, and the order to transmit the original transcript of record to the Supreme Court of the United States in: Cause No. 10305, National Labor Relations Board, Petitioner, vs. Illinois Bell Telephone Company, Respondent, as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this seventh day of August A.D. 1951.

[SEAL] (S.) KENNETH J. CARRICK,
Clerk of the United States Court of Appeals for the Seventh Circuit.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1951 862508 106